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A RAND NOTE

Transatlantic Collaboration:  
Government Policies, Industry Perspectives

Rachel Kaganoff

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## Transatlantic Collaboration: Government Policies, Industry Perspectives

Rachel Kaganoff

Prepared for the  
Under Secretary of Defense for Acquisition

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## PREFACE

This Note surveys U.S. industry plans for future collaborative partnerships with European firms, both in the context of government-sponsored programs, such as those funded in part by the Nunn Amendment of 1986, and partnerships that are or will be entirely industry initiated. In addition, this study examines current government policies used to coordinate and oversee such collaborative relationships. It should be of interest to policymakers concerned with transatlantic defense cooperation, arms export policies, NATO issues, and the U.S. industrial base.

This Note is part of a larger RAND research effort to assess the prospects for future transatlantic collaboration: (1) in light of U.S. government policies and U.S. industry plans (presented in this Note) as well as (2) in light of the changing nature of the European defense industrial base (reported in a companion document, *The Transformation of the European Defense Industry: Emerging Trends and Prospects for Future U.S.-European Competition and Collaboration*, by James B. Steinberg, 1992).

The research was conducted for the Office of International Programs and Technology in the Office of the Under Secretary of Defense for Acquisition. It was carried out within the Acquisition and Support Policy Program of RAND's National Defense Research Institute, a federally funded research and development center sponsored by the Office of the Secretary of Defense and the Joint Staff.

## SUMMARY

The defense industries in both Europe and the United States are currently in a state of transition. As the United States and NATO downsize their militaries, the firms that support these militaries on both sides of the Atlantic will undergo restructuring, both in how they function within their own countries and in their relationships across borders and across the Atlantic. In response to the changing world order resulting from the end of the Cold War, Europe is struggling to redefine itself politically and strategically. Both of these issues are having a profound effect on the U.S. defense industry and how it thinks about and plans to develop collaborative relationships with European firms. This Note reviews current government policies used to coordinate and oversee such collaborative relationships. In addition, it surveys U.S. industry plans for future collaborative partnerships with European firms, both in the context of government-sponsored programs, such as those funded in part by the Nunn Amendment of 1986, and partnerships that are or will be entirely industry initiated.

### TRANSATLANTIC COLLABORATION: FOUR KEY ISSUES

Transatlantic defense collaboration has been the focus of considerable policy-making attention over the years. Congress, working in concert with the executive branch, has been the ultimate decisionmaker on issues relating to collaborative programs. Through authority delegated by Congress, the Departments of State, Commerce, and Defense (DoD) have also played key roles in defining the course of such programs. The policy-making activity surrounding transatlantic collaborative programs has sought to achieve four main goals:

- Encourage rationalization, standardization, and interoperability (RSI) and burden-sharing.
- Regulate technology transfers and the release of classified information.
- Protect the defense industrial base.
- Maintain U.S. industry access to European markets.

Policies enacted to support any one of these four areas have not always facilitated accomplishing one of the other objectives. As a result, the legislative activity in these four areas (and the departmental responses to such activity) has resulted in a regulatory system with many overlapping lines of authority and various conflicting policy goals. These

overlapping lines of authority and conflicting policy goals have had a critical impact on the course of collaborative programs and will continue to drive the direction of such programs in the future.

## **LINES OF AUTHORITY**

### **Rationalization, Standardization, and Interoperability/Burden-sharing**

Beginning in the post-World War II era, Congress as well as the executive branch sought to collaborate with our European allies in order to aid them in rebuilding their national defense industries. Industrial recovery was seen as a means to strengthen U.S. allies and therefore strengthen the NATO alliance. As European defense industries regained their strength, the Congress and the executive branch continued to support collaborative efforts. The belief was that through collaboration, the United States and the allied nations would be better able to rationalize, standardize, and increase the interoperability (RSI) of their forces. RSI was seen as a positive outcome for a variety of reasons. First, it was hoped that through RSI, overall defense expenditures could be kept down. Second, it was believed that RSI would greatly enhance allied war-fighting capabilities. In the event of war, allied forces would be easier to integrate, spare parts could be shared, and command and control would be facilitated. Third, through RSI, the U.S. government wished to strengthen the overall alliance cohesion of NATO. Finally, in peacetime, it was hoped that collaboration would also increase NATO burden-sharing.

Concern over burden-sharing and RSI led Congress to pass three primary pieces of legislation. The first was the Culver-Nunn Amendment in 1977, the second was the Roth-Glenn-Nunn Amendment in 1983, and the third was the Nunn-Roth-Warner Amendment in 1985. All three pieces of legislation work to facilitate collaborative programs, both in terms of encouraging U.S. government support for such efforts as well as by appropriating government funds specifically for collaborative programs.

### **Regulating Technology Transfers and the Release of Classified Information**

Congress uses two primary legislative schemes to regulate the transfer of sensitive technologies and products. The first is the Export Administration Act (EAA), which focuses primarily on the export of commercial items but also delegates authority over dual-use products and technologies ("dual-use" refers to those products or technologies that can be employed for either military or commercial end-use). The second is the Arms Export Control Act (AECA), which regulates the export or transfer of products and technologies destined solely for military end-use. Finally, authority over the release of classified information to

allied countries was delegated by executive order to be shared by the Departments of State and Defense.

**The Export Administration Act.** The EAA is administered by the Department of Commerce. However, the EAA also delegates authority to the State Department over U.S. participation in the Coordinating Committee on Multilateral Export Control (CoCom). In this way there is overlapping authority over the implementation of the EAA across the Departments of Commerce and State. Finally, a number of offices within the DoD are consulted on many Commerce decisions concerning the transfer of dual-use products and technologies.

**The Arms Export Control Act.** An executive order issued in 1977 delegated the authority described in the AECA to the Department of State in consultation with the Departments of Commerce and Defense. In practice, the State Department bears primary responsibility for implementing the AECA. However, many offices within both Commerce and Defense provide advice and comment before the State Department makes final export licensing decisions. In addition, before a license is granted for defense sales valued in excess of \$14 million, or total sales exceeding \$50 million, the application must be reported to and reviewed by Congress.

**Conflicting policy goals.** Policies used to achieve the first and second policy goals, encouraging RSI and burden-sharing while simultaneously protecting sensitive U.S. technologies and products, place conflicting tensions on transatlantic collaboration. In regulating the transfer of sensitive technologies and products, policy choices are often made that run counter to those one might make to pursue the first policy goal, that of encouraging RSI and burden-sharing. If one seeks to protect technologies from falling into the hands of our adversaries, it is logical to place tight restrictions on all proposed technology transfers. On the other hand, if one hopes to encourage RSI, one must be willing to approve the transfer of many defense-related technologies and products. Similarly, if the United States intends to encourage burden-sharing through collaboration, many requests will be generated to release technology and product information to allied firms. These two policy goals thus run directly at odds with each other.

#### **Protecting the U.S. Defense Industrial Base**

The Buy America Act of 1933 is the primary piece of legislation used to protect the U.S. defense industrial base from foreign competitors. The Act stipulates that products under its jurisdiction must be purchased from domestic suppliers unless such purchases are inconsistent with vital national goals (such as in wartime) or their costs are prohibitive.

The tension described between policy goals one and two is again present here. Conceptually as well as practically, it is difficult to envision a way to both protect domestic suppliers while supporting collaboration as a means to increase RSI and burden-sharing. Protective trade barriers and Buy America provisions make collaborative programs less, rather than more, feasible.

### **Maintaining U.S. Industry Access to European Markets**

The most effective way for U.S. firms to maintain access to European markets is to approach these markets with European partners. The primary policy-making activities that relate to this goal have been in the area of the General Agreement on Tariffs and Trade (GATT) agreements and the Single European Act (SEA). In 1987, during the Tokyo Round of the GATT multilateral trade negotiations, a set of agreements was adopted that sought to make government procurement by the GATT signatories more transparent and attempted to ensure that domestic products and suppliers were not favored or protected by existing procurement regulations. Although defense products were not explicitly included in the GATT agreements, there has been both domestic and international pressure on the signatories to treat defense procurement in the same manner as other non-defense government procurement or to adopt a "Defense GATT." Market access was also an issue in the negotiations over the Single European Act. During these negotiations, there was considerable debate over whether individual nations would be allowed to impose tariffs on many defense imports, in particular dual-use-equipment. The U.S. government was very opposed to this interpretation of Article 30. After much outcry the Europeans backed down.<sup>1</sup>

Pursuing European market access necessitates policies that may conflict with two of the preceding goals. First, it is difficult to argue that the United States should be granted equal access to the European marketplace while simultaneously protecting U.S. industry from European competitors by imposing Buy America restrictions and our own set of custom and tariff barriers. Similarly, protecting U.S. technology through strict technology-transfer regulations makes maintaining market access through facilitating collaborative programs all the more difficult.

### **Lines of Authority: General Conclusions**

The preceding discussion clarifies two issues critical to an understanding of transatlantic collaboration. First, the lines of authority between Congress, the executive

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<sup>1</sup>See Michael Moodie, *Defense Implications of Europe 92*, CSIS Significant Issues Series, Volume XII, Number 2, 1990. Hereinafter, *Defense Implications of Europe 92*.



branch, and the three key departments are consistently interlinked. Few, if any, decisions relating to collaborative programs can be made by one policy-making body acting alone. Nearly all areas of regulatory responsibility are shared across at least two departments, or just as frequently, shared within multiple offices within the same department. Second, the four key policy goals discussed at the outset have been directly reflected in the regulatory structure governing transatlantic collaboration. Just as these policy goals are divided in focus and intent, the responding regulatory structure often works at odds with itself.

## **U.S. DEFENSE INDUSTRY INTERVIEWS**

In the course of this research, senior-level managers at 15 of the top U.S. defense firms were interviewed. The managers interviewed fell into three broad categories: vice presidents and directors (or the equivalent) in charge of international business development, program managers in charge of cooperative programs, and managers in charge of export licensing. Managers in each category were asked a series of qualitative research questions focused on three main areas. The first area addressed the firm's previous involvement in cooperative programs. The managers were then asked a second set of questions concerning the various departments (primarily Commerce, State, and the DoD) that regulate transatlantic collaboration, particularly focusing on how the overlapping lines of authority (addressed in Section 2) affect U.S. industry behavior. The third area focused on company assessments of the implications of both U.S. policies and the market challenges that may result from EC 92 (the European Community's program to compete as a single market), and the resulting corporate plans for industry- and government-initiated cooperative programs.

### **Past and On-going Cooperative Programs**

Of the 15 firms represented in this study, 10 had participated in at least one of the Nunn-sponsored cooperative programs, and all 15 had some experience in at least one form of cooperative program. Of the ten who had participated in Nunn programs, only three had experienced what they defined as "success" with the programs. All seven of the firms whose programs had been canceled by the U.S. government defined their programs as "failures" and stated that U.S. policy toward cooperative programs in general, and more specifically Nunn programs, is internally contradictory and inconsistent and thus reduces the likelihood that programs will survive through the production phase.

From the total sample, ten of the firms expressed skepticism about both current and future Nunn-sponsored efforts, two were positive and three were neutral. Even given their skepticism, only three firms stated that they had no interest in future Nunn efforts. Ten firms stated that they would be open to new Nunn projects. Of the ten firms currently

involved in the Nunn programs, nearly all had experienced severe bureaucratic difficulties attempting to complete their projects.

### **Commerce, State, and the DoD: Regulatory and Management Concerns**

During the second part of the interviews, the focus shifted to industry evaluations of the strengths and weaknesses of the three departments responsible for overseeing most aspects of cooperative programs.

**The Department of Commerce.** The managers interviewed were generally supportive of what they frequently referred to as "The Commerce Approach" to dealing with both cooperative programs and more generally with arms trade. However, there was nearly universal dissatisfaction with the increased authority Commerce has been given in participating in the Memoranda of Understanding (MOU) review process. Only two firms interviewed stated that they were strongly in favor of the new Commerce responsibilities. Six of the firms were opposed to the changes, and the remaining firms were neutral in their assessments. The firms who were opposed to the changes stated that staff members of the Department of Commerce do not have the technical expertise necessary to handle these new responsibilities.

**The Department of State.** The primary criticism of the Department of Commerce, lack of technical expertise, was directed just as strongly to the Department of State. In contrast to Commerce, all of the firms interviewed supported the recent organizational changes within State. Many of the firms cited decreases in the processing time of basic licenses and a noticeable increase in staffing and attention focused on issues of cooperation and arms trade. Finally, a majority of the firms interviewed stated that the 1990 Secretary Eagleberger cable concerning U.S. embassy support for defense trade had made a marked difference in their ability to negotiate both narrow coproduction agreements and more broad co-development contracts.

**The Department of Defense.** U.S. industry concerns with DoD policies and procedures rested primarily in two areas, technology transfer and national disclosure policy. Five of the managers interviewed stated that for their firms, the biggest impediment to future cooperative programs is U.S. technology transfer policy. Another four asserted that U.S. technology transfer policy frequently impedes their efforts to establish cooperative programs, though they would not go so far as to assert that this was the most critical factor. Among the nine firms concerned about technology transfer policies, managers consistently said that the process of evaluating technology transfer requests (which are directed by the Defense Technology Security Agency [DTSA] and processed through a number of offices at

the DoD) takes far too long. Finally, many of the firms argued that DTSA does not have the necessary technical expertise to evaluate requests to transfer many of the more sophisticated technologies.

**The National Disclosure Policy Committee (NDPC).** Firms must request exemptions to the non-disclosure policy (NDP) if classified information must be transferred to a European firm to complete a coproduction or co-development contract. U.S. firms must have sponsorship by one of the military services to bring such a request to the Committee. Firms have found it extremely difficult to find a Service sponsor, and once they have found one, they claim that it is very difficult to persuade Service representatives to complete the requisite paperwork to move the exemption request forward.

### **U.S. Policy and EC 92: Where Do We Go from Here?**

Most of the managers interviewed asserted that EC 92 has been overdramatized and went on to argue that they are still dubious about when the new Europe will arise and what form it will actually take. They argued that because of the changing world situation (rather than just the situation in Europe), it is in U.S. industry's best interests to cooperate with the Europeans. Many of the managers said that with declining U.S. defense expenditures, access to the world defense market is very important and the Europeans make up a large part of this market. All of the firms agreed that establishing cooperative relationships in NATO increases U.S. market access to Europe and that increased market access is very desirable.

### **General Policy Problems**

U.S. industry attitudes concerning general U.S. government policy problems in transatlantic collaboration focused primarily on the issue of interdepartmental coordination. Most of the U.S. firms interviewed here argued that in order to complete a collaborative program they bear the primary responsibility for coordinating the policy activities of the three main departments. Many of the managers argued that such coordination is quite difficult given the overlapping nature of policy responsibilities and differing policy goals, both across departmental lines and within individual departments. These firms see the U.S. government as a whole sending very conflicting signals about whether it does or does not want to support cooperative programs. These firms go on to argue that given the risky and complicated nature of launching and completing a collaborative program, U.S. government support, or at least consistency, is a vital part of the equation.

## CONCLUSION

U.S. industry managers consistently supported the proposition that current U.S. government policies used to regulate transatlantic collaboration are contradictory both in theory and in practice. These managers argued that government policies play a significant role in U.S. industry plans concerning transatlantic collaboration. According to industry managers, as long as government policy goals are as complex and conflicted as industry perceives them to be at present, it will continue to be difficult for industry to either complete existing collaborative programs or to launch new ones. This research also makes evident that industry's desires are no less conflicted than those of the U.S. government. They, like many government policymakers, would like to have their cake and eat it, too. In the final analysis, government policymakers still have a choice to make: Are transatlantic collaborative programs something that they wish to support or not? If yes, U.S. defense industry representatives believe that government policymakers must attempt to better reconcile what industry asserts are multiple, noncomplementary goals and simultaneously simplify the current system of overlapping lines of authority used to regulate and oversee transatlantic collaborative programs. Without such actions, these industry managers assert that U.S. government policies will continue to stymie industry efforts in this area.

## **ACKNOWLEDGMENTS**

The research for this Note draws on extensive interviews with U.S. industry representatives, U.S. government officials, and private analysts. The author would like to thank all of those who participated in this process. Without them this study could not have been produced. In addition, James B. Steinberg, Mark Lorell, Malcolm Haworth, and Kevin J. Riley made invaluable contributions to the form and content of this document.

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## 1. INTRODUCTION

The defense industries in both Europe and the United States are currently in a state of transition. As both the United States and NATO downsize their militaries, the firms that support these militaries on both sides of the Atlantic are going to be forced to restructure, both in how they function within their own countries and in their relationships across borders and across the Atlantic. In response to the changing world order resulting from the end of the Cold War, Europe is struggling to redefine itself internally. Both of these issues have had a profound effect on the U.S. defense industry and how it thinks about and plans to develop collaborative relationships with European firms. This Note reviews current government policies used to coordinate and oversee such collaborative relationships. In addition, this Note surveys U.S. industry plans for future collaborative partnerships with European firms, both in the context of government-sponsored programs, such as those funded in part by the Nunn Amendment of 1986, and partnerships that are or will be entirely industry initiated. This study does not attempt to provide policymakers with the answer to the question Should U.S. firms be collaborating with European partners? Rather, by bringing together current government policies and industry perspectives on transatlantic defense collaboration, this work should allow policymakers to address the following concerns: (1) Are the policies now in place structured so that they facilitate or hinder U.S. industry efforts at establishing collaborative programs? (2) Given the current structure of government policies (and any policy changes on the immediate horizon), what is the likelihood that American firms will be able to expand or simply continue existing partnerships with European firms?

## STRUCTURAL OVERVIEW

The following study is divided into two main sections. Section 2 addresses existing government policies and regulatory responsibility shared by the Departments of State, Commerce, and Defense (DoD) as well as the Congress over the management and implementation of cooperative defense programs. This section provides a detailed discussion of the conflict between the four primary policy goals being pursued by Congress, the executive branch, and the three key departments. In addition, it will attempt to clarify the overlapping lines of authority over the regulation and oversight of transatlantic collaborative programs. Section 3 summarizes and analyzes the results of a series of interviews with senior-level managers at 15 top U.S. defense firms. Interview questions focus on how the



policy goals and lines of authority described above bear upon the actions taken by U.S. industry. In addition, industry managers were asked to discuss other factors influencing their decisions concerning collaborative programs (in particular, the effect of the downsizing of the U.S. military and the upcoming implementation of EC 92).

It is important to begin a discussion of international cooperative programs by first defining what one means by such programs. For the purposes of this study, an international cooperative program refers to any program in which costs, risks, and revenues are being shared by firms from two or more different nations. International cooperative programs can and do include one or more of the following: co-development, coproduction, cooperative research and development, joint ventures, and teaming.<sup>1</sup>

According to a 1983 DoD Task Force Report, the first authorized U.S. coproduction programs were the F-104 aircraft and the HAWK air defense system, both initiated in the late 1950s. Over time, the number of collaborative relationships between U.S. and European partners has steadily increased. According to data collected by the Defense Systems Management College in 1990, teaming relationships have increased from only six in 1986 to 36 in 1989 (see Figure 1).

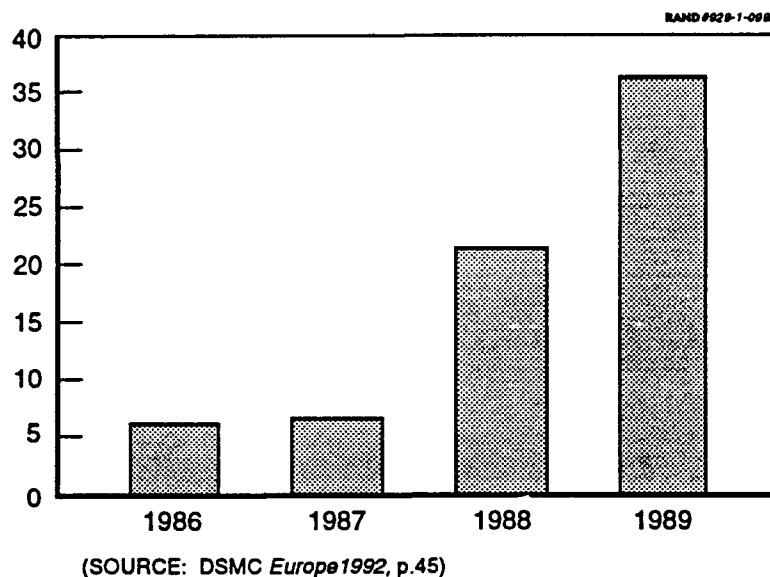
#### **TRANSATLANTIC COLLABORATION: FOUR KEY ISSUES**

Transatlantic defense collaboration has been the focus of considerable policy-making attention over the years. Congress, working in concert with the executive branch, has been the ultimate decisionmaker on issues relating to collaborative programs. Through authority delegated by Congress, the Departments of State, Commerce, and Defense have also played key roles in defining the course of such programs. The policy-making activity surrounding transatlantic collaborative programs has sought to achieve four main goals:

- Encourage rationalization, standardization, and interoperability (RSI) and burden-sharing.
- Regulate technology transfers and the release of classified information.
- Protect the defense industrial base.
- Maintain U.S. industry access to European markets.

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<sup>1</sup>Co-development is defined as joint design, engineering, and/or production. Coproduction refers to shared production and/or assembly. A joint venture refers to a jointly owned corporate entity to pursue a particular program or class of programs. Finally, teaming is defined as collaboration on a specific program as a prime or subprime. These definitions were taken from *Arming our Allies: Cooperation and Competition in Defense Technology*, OTA-ISC-449 (Washington, D.C.: U.S. Government Printing Office, May 1990). Hereinafter, *Arming Our Allies*.



**Figure 1—U.S.-NATO Collaborative Teams**

However, policies enacted to support one or more of these goals have not necessarily helped accomplish the other objectives. As a result, the legislative activity in these four areas (and the departmental responses to such activity) has resulted in a regulatory system with many overlapping lines of authority and various conflicting policy goals, which have had a critical impact on the course collaborative programs have taken in the past and will continue to shape the direction of such programs in the future.

#### **Rationalization, Standardization, and Interoperability/Burden-sharing**

Beginning in the post-World War II era, Congress as well as the executive branch sought to collaborate with our European allies to aid them in rebuilding their national defense industries.<sup>2</sup> Industrial recovery was seen as a means to strengthen our allies and therefore strengthen the NATO alliance. Keeping the Alliance strong has remained a central congressional goal. As European defense industries regained their strength, the Congress and the executive branch continued to support collaborative efforts. The belief was that through collaboration, the United States and the allied nations would be better able to rationalize, standardize, and increase the interoperability of their forces. RSI was seen as a

<sup>2</sup>It should be noted that U.S. industry also clearly benefited enormously from the direct sales and licensed coproduction agreements that were a feature of U.S. industrial assistance policy in the fifties and sixties.

positive outcome for a variety of reasons. First, it was hoped that through RSI overall defense expenditures could be kept down, allowing the allied nations to use government dollars for expenditures besides defense. Second, it was believed that RSI would greatly enhance allied war-fighting capabilities (and simultaneously increase NATO's overall deterrent posture). In the event of war, allied forces would be easier to integrate, spare parts could be shared, and command and control would be facilitated. Third, through RSI, the U.S. government wished to strengthen the overall alliance cohesion of NATO. Finally, in peacetime, it was hoped that collaboration would also increase NATO burden-sharing. Throughout the post-WWII years, there has been considerable concern within the Congress (as well as the departments) that the NATO countries do not bear their fair share of the burden of defending the Alliance. By facilitating collaboration it was hoped that European governments would be encouraged to take a larger role in producing the products and technologies necessary to form an adequate NATO defense.

Concern over burden-sharing and RSI led Congress to pass three primary pieces of legislation. The first was the Culver-Nunn Amendment in 1977, the second was the Roth-Glenn-Nunn Amendment in 1983, and the third was the Nunn-Roth-Warner Amendment in 1985. A complete discussion of these pieces of legislation can be found in Section 3. All three pieces of legislation work to facilitate collaborative programs, both in terms of encouraging U.S. government support for such efforts as well as by appropriating government funds specifically for collaborative programs.

### **Regulating Technology Transfers and the Release of Classified Information**

Congressional and executive branch concerns over preventing the transfer of vital technologies and classified information first became an issue in the years immediately after World War II. As the Cold War developed, these concerns intensified. Congress and the executive branch sought to protect both U.S. technology and classified information from transferring to the USSR or the Warsaw Pact, either directly or as a secondary transfer from one of our NATO allies. These concerns were grounded on national security fears. The U.S. government, by adopting restrictive technology transfer rules and regulations, wanted to prevent the USSR or the Warsaw Pact from benefiting from any of our technological developments such that they might then be able to achieve a comparative advantage in defense capabilities. Over the years, both Congress and the executive branch have continued to favor tight restrictions on the transfer of products, technologies, and classified information. However, according to government representatives interviewed in the course of this study, their impetus for enacting such measures has shifted. With the collapse of the

Berlin Wall and the breakup of the Warsaw Pact came reduced pressure for protectionist measures on national security grounds. However, these political changes have led to major declines in defense spending both in the United States and in NATO, with the prospect of losses in defense employment and the defense industrial base. As a result, there have been new cries for protectionist legislation.

Congress uses two primary legislative schemes to regulate the transfer of sensitive technologies and products. The first is the Export Administration Act (EAA), which focuses primarily on the export of commercial items but also delegates authority over dual-use products and technologies ("dual-use" refers to those products or technologies that can be employed for either military or commercial end-use). The second is the Arms Export Control Act (AECA), which regulates the export or transfer of products and technologies destined solely for military end-use. Finally, authority over the release of classified information to allied countries was delegated by executive order to be shared by the Departments of State and Defense.

**The Export Administration Act.** The EAA is administered by the Department of Commerce through the Export Administration Regulations (EAR). However, the EAA also delegates authority to the State Department over U.S. participation in the Coordinating Committee on Multilateral Export Control (CoCom). In this way, authority over the implementation of the EAA overlaps across the Departments of Commerce and State. Finally, a number of offices within the DoD are consulted on many Commerce decisions concerning the transfer of dual-use products and technologies. The Defense Technology Security Agency (DTSA) within DoD, in particular, plays a key role in many such decisions.

**The Arms Export Control Act.** An executive order issued in 1977 delegated the authority granted by the AECA to the Department of State in consultation with the Departments of Commerce and Defense. In practice, the State Department bears primary responsibility for implementing the AECA. However, many offices within both Commerce and Defense provide advice and comment before the State Department makes final export licensing decisions. In addition, for all licenses for defense sales valued in excess of \$14 million, or total sales exceeding \$50 million, the application must be reported to and reviewed by Congress before the license can be granted.<sup>3</sup>

Finally, as stated at the outset of this section, authority over the release of classified information to allied countries is shared at the highest level between the Departments of

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<sup>3</sup>This sort of review is known as "notice and wait." Congress has 30 days to pass a resolution of disapproval. That resolution must then be signed by the president or vetoed. If Congress does not sign such a resolution within 30 days, the sale is automatically approved.

State and Defense, and nearly ten departments share in the responsibility of consulting on such decisions. Overlapping lines of authority are present in every aspect of the process of regulating the transfer of sensitive products and technologies, both those destined for solely military use and those defined as dual-use in nature.

**Conflicting policy goals.** The preceding introduction to the policies used to achieve the first and second policy goals, encouraging RSI and burden-sharing, while simultaneously protecting sensitive U.S. technologies and products, presents a clear example of how these two policy goals place conflicting tensions on transatlantic collaboration. Regulating the transfer of sensitive technologies and products frequently entails policy choices that run counter to encouraging RSI and burden-sharing. If one seeks to protect technologies from falling into the hands of our adversaries, it is logical to place tight restrictions on all proposed technology transfers based on the assumption that we have far less control over to whom our allies may transfer our technologies than we do over to whom our native industries may transfer them. On the other hand, if one hopes to encourage RSI, one must be willing to approve the transfer (presumably on both sides of the Atlantic) of many defense-related technologies and products. Similarly, if the United States intends to encourage burden-sharing through collaboration, many requests will be generated to release technology and product information to allied firms. These two policy goals thus are directly at odds with each other.

### **Protecting the U.S. Defense Industrial Base**

The Buy America Act is the primary piece of legislation used to protect the U.S. defense industrial base from foreign competitors.<sup>4</sup> The Act stipulates that products under its jurisdiction must be purchased from domestic suppliers unless such purchases are inconsistent with vital national goals (such as in wartime) or their costs are prohibitive.<sup>5</sup> The accepted cost differential used in the Act is that domestic items must be more than 50 percent more expensive than foreign-supplied products before domestic purchases are classified as prohibitive by virtue of cost.

The tension described between policy goals one and two is again present here. Conceptually as well as practically, it is difficult to envision a way to both protect domestic suppliers (unless their costs are 50 percent higher) while simultaneously supporting collaboration as a means to increase RSI and burden-sharing. This by no means is meant to

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<sup>4</sup>The Buy America Act of 1988 is PL 100-418; see in particular Section 7002.

<sup>5</sup>The Buy America Act restrictions may also be waived by negotiating and enacting a reciprocal procurement Memoranda of Understanding (MOU). For a complete discussion of such MOUs see below.

imply that the two goals are mutually exclusive. The two goals may both be reached if the U.S. government learns to strike a delicate balance between them. Such a balance has thus far eluded policymakers on this side of the Atlantic.

### **Maintaining U.S. Industry Access to European Markets**

The simplest method available for U.S. firms to maintain access to European markets is for the firms to approach these markets with European partners. In this way, any legislation or government activity that makes collaborative programs more feasible promotes the policy goal of maintaining U.S. industry access to European markets. The primary policy-making activities that specifically relate to this goal have been in the area of the General Agreement on Tariffs and Trade (GATT) agreements and the debate surrounding the Single European Act (SEA). In 1987, during the Tokyo Round of the GATT multilateral trade negotiations, a set of multilateral agreements was adopted that sought to make non-defense government procurement by the GATT signatories more transparent and attempted to ensure that domestic products and suppliers were not favored or protected by existing procurement regulations. Although governments were explicitly authorized to exclude defense products in the GATT agreements, there has been both domestic and international pressure on the signatories to treat defense procurement in the same manner as other non-defense government procurement or to adopt a "Defense GATT." Market access was also an issue in the negotiations over the SEA. Throughout the debate over the SEA, there was a great deal of discussion concerning the status of defense equipment as well as dual-use articles. There was additional discussion as to whether Article 30 of the Act was ambiguous enough to allow the European Community (EC) authority to permit tariffs on participating nation's defense goods. The U.S. government was very opposed to this interpretation of Article 30. Originally, Article 223 of the Treaty of Rome allowed individual countries to exempt defense goods from EC tariffs. Following a great deal of international pressure imposed by U.S. officials, the Europeans backed down.<sup>6</sup> This debate helped provide the impetus for the Council of NATO Armaments Directors (CNAD) to review the pros and cons of developing a defense GATT.

Pursuing the fourth goal, European market access, necessitates policies that conflict with two of the preceding goals. First, it is difficult to argue that the United States should be granted equal access to the European marketplace while simultaneously protecting U.S. industry from European competitors by imposing Buy America restrictions and our own set

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<sup>6</sup>*Defense Implications of Europe 92.*

of custom and tariff barriers. Similarly, protecting U.S. technology through strict technology transfer regulations makes maintaining market access through facilitating collaborative programs all the more difficult.

## 2. LINES OF AUTHORITY

The following section addresses the evolution of government policy concerning the oversight and implementation of cooperative defense programs. As described in the introduction, current government policies designed to regulate collaborative programs can at best be described as divided in focus. Further, the implementing mechanisms arrived at over time to meet these various policy goals now encompass a complicated system of overlapping lines of authority. The very nature of this regulatory structure has had a profound influence on the evolution of and future prospects for collaborative programs. It is only with an understanding of each of the key bureaucratic players (Congress, State, Commerce, Defense, and the executive branch) and the internal framework each has chosen to employ in order to oversee the many facets of transatlantic collaboration, that one can fully assess the prospects for future collaborative projects, or begin to determine how one might streamline the policy process if one decides that facilitating such programs should be a policy goal.

Through legislative action, Congress has delegated extensive oversight authority to the Departments of State, Defense, and Commerce. It has written and implemented legislation in four main areas that concern cooperative programs. The first is in the area of rationalization, standardization, and interoperability, the second is in export controls, the third relates to protecting the U.S. defense industrial base, and the fourth concerns maintaining U.S. industry access to European defense markets. In order to implement the authority vested in them by Congress, each of these agencies has developed their own internal directives and management structures. These departmental policies and procedures are addressed in subsections following the initial description of the evolving role Congress has played in managing and administering cooperative defense programs and arms trading. The one exception to the rule of congressional delegation of authority is in the area of disclosing classified information to allied countries. Authority in this area was delegated to the Departments of State and Defense by executive order. This responsibility is addressed in the last part of this section.

### CONGRESS

Congress has consistently played a critical role in determining the nature of both international arms trade and international defense collaboration. In the years immediately following World War II, Congress was primarily interested in encouraging international cooperative programs with European partners as a means to aid European industry as it



recovered from the war. By encouraging coproduction of all kinds, Congress sought to facilitate a return to self-sufficiency on the part of NATO armaments producers. As the years passed and European firms regained their strength and market positions, congressional concern shifted to three areas that are of vital importance to current U.S. industry efforts to collaborate with European partners on defense programs. The first has been in the development of legislation seeking to rationalize, standardize, and increase the interoperability of U.S. and NATO weapons systems. The second has been the continuing congressional debate surrounding export controls and restrictions on technology transfers. And the third has been the increasing focus and concern over protecting the U.S. defense industrial base from undue or unfair foreign economic competition.

### **Rationalization, Standardization, and Interoperability**

In 1977, Congress passed the first legislation that explicitly addressed the issue of RSI. The legislation, referred to as the "Culver-Nunn" Amendment, stated:

It is the policy of the United States that equipment for the use of personnel of the Armed Forces of the United States stationed in Europe under the terms of the North Atlantic Treaty should be standardized or at least interoperable with equipment of other members of the North Atlantic Treaty Organization. Accordingly the Department of Defense shall initiate and carry out methods of cooperation with its allies in defense equipment acquisition to improve NATO's military effectiveness and to provide equitable economic and industrial opportunities for all participants. The Department of Defense should also seek greater compatibility of doctrine and tactics to provide a better basis for arriving at common NATO requirements. The goal is to achieve standardization of entire weapons systems where feasible, and to gain the maximum degree of interoperability throughout the alliance military forces.<sup>1</sup>

The Culver-Nunn Amendment gave the Secretary of Defense the authority to waive the Buy America Act of 1933. By virtue of this waiver, the DoD was then able to begin to negotiate a series of reciprocal procurement MOUs with many of our NATO allies. As of March 1989, the U.S. government had negotiated over 87 MOUs with 19 countries.<sup>2</sup> These reciprocal procurement MOUs set up bilateral agreements between the DoD and the Ministry of Defense in the partner country. Each agreement stipulates "the waiver of 'buy national' restrictions, customs, and duties in order to allow the contractors of the signatories to participate, on a competitive basis, in the defense procurements of the other country."<sup>3</sup> By

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<sup>1</sup>The Culver-Nunn Amendment became a part of PL 95-485.

<sup>2</sup>*Military Coproduction: U.S. Management of Programs Worldwide*, GAO/NSIAD-89-117, the U.S. General Accounting Office, March 1989, p. 12. Hereinafter, *Military Coproduction*, GAO 1989.

<sup>3</sup>*Selling to the Allies: A Guide for U.S. Firms*, Office of Foreign Contracting, Office of the Deputy Assistant Secretary of Defense, Procurement, The Department of Defense, U.S. Government Printing Office, January 1991, p. 1. Hereinafter referred to as *Selling to the Allies*. To date, the U.S.

signing a reciprocal procurement MOU, each signatory agrees to waive their nation's "buy national" restrictions and any applicable customs and duties on products covered within the agreement. These agreements are not blanket waivers of all trade restrictions. Highly sensitive technology and products determined to be critical to a national mobilization or national emergency are exempt from the waivers imposed by the reciprocal procurement MOUs.

The 1977 Culver-Nunn Amendment was reinforced in 1982 with the passage of the Defense Authorization Act of FY 1983, which included the Roth-Glenn-Nunn Amendment.<sup>4</sup> This amendment restated U.S. government support for and commitment to defense cooperation with our NATO allies. A second piece of legislation, H. R. 4623, was also passed in 1982 stipulating that the Department of Defense is required to report annually to Congress concerning U.S. efforts to achieve RSI with our NATO allies.<sup>5</sup> That report was to include "an assessment and evaluation of the costs of failure to standardize equipment within NATO, a list of actions to be taken to standardize equipment, and a report on progress achieved."<sup>6</sup>

In 1985, Congress passed additional legislation that dealt with the RSI issue. The Nunn-Roth-Warner Amendment was adopted as an amendment to the FY 1986 Defense Authorization Act.<sup>7</sup> The amendment set aside funds for two primary purposes. First, monies were made available to support U.S. defense industry R&D efforts with NATO partners, and second, a smaller pool of money was set aside for side-by-side testing of U.S. and NATO weapons systems.<sup>8</sup> In addition, the Nunn Amendment instructed the DoD to pay increased attention to opportunities for collaboration with NATO partners in all stages of the acquisition process. According to the Office of Technology Assessment (OTA), there are now

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government has signed 17 reciprocal and two non-reciprocal Memoranda of Understanding. The signatories are: Australia, Belgium, Canada, Denmark, Egypt, Germany, France, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. The two non-reciprocal agreements are with Australia and Canada.

<sup>4</sup>FY 1983 Defense Authorization Act, Public Law 97-252, Stat 718.

<sup>5</sup>This stipulation can be found in Public Law 97-295, 10 U.S.C. (Title 10, United States Code), Section 2457, signed in October 1982.

<sup>6</sup>Ibid. Section 2457.

<sup>7</sup>The Nunn-Roth-Warner Amendment became a part of Public Law 99-145.

<sup>8</sup>The funding history for the Nunn programs is as follows: 1986--\$100 M, 1987--\$145 M, 1988--\$150 M, 1989--\$154 M, and 1990--\$117 M. Nunn funding data was reported in *Arming Our Allies*, p. 98. To qualify for Nunn monies, programs must be undertaken "... under a Memorandum of Understanding or other formal agreement to carry out a joint research and development program on conventional defense equipment and munitions, or to modify existing equipment to meet United States military requirements...[agreements] may not be entered into unless the Secretary of Defense determines that the proposed project enhances the ongoing multinational effort to improve NATO's conventional defense capabilities through the application of emerging technology."

a total of 28 active Nunn-sponsored programs, with 8 new programs waiting for contracts and an additional 11 programs still in negotiation.

The FY 1990-1991 National Defense Authorization Act added a new reporting requirement concerning cooperative programs. In addition to the DoD's annual report to Congress on the progress made toward RSI, the DoD is now being asked to report annually on the "status, funding, and schedule of cooperative research programs . . . underway or proposed with both our NATO and major non-NATO allies."<sup>9</sup> The first report of this kind was made in June 1990 in the "Combined Annual Report to Congress on Standardization of Equipment with NATO Members and Cooperative Research and Development Projects with Allied Countries." Not only did the report provide information on the status of cooperative programs, it also provided one of the clearest public statements of DoD goals concerning such programs. The report stated the following:

The DoD seeks to achieve improved warfighting capabilities as well as cost savings by cooperating with its Allies in the development, production and follow-on support of military equipment. DoD's objectives for such armaments cooperation activities include: DoD access to, use of, and protection of the best U.S. technology, in order to avoid duplication of effort; Deployment and support of common—or at least interoperable—equipment with the Allies; and Achievement of economies of scale by coordinated research, development, production and logistic support programs.

### **Export Controls**

Virtually all collaborative programs require some form of export license (or licenses) to transfer technologies, components or end products between partner firms. The structure and framework of export controls and technology transfer policies are of vital importance to collaborative ventures.

Congress has delegated authority over the export or transfer of defense or dual-use end-products and technologies with the passage of two primary pieces of legislation: the Export Administration Act (EAA) and the Arms Export Control Act (AECA). The Export Administration Act is administered by the Department of Commerce through the Export Administration Regulations. The Department of State, through the International Traffic in Arms Regulations (ITAR) (which includes the U.S. Munitions List [USML]), administers the Arms Export Control Act.

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<sup>9</sup>This stipulation can be found in Public Law 101-189 (November 29, 1989), 10 U.S.C., Section 2350a. Quote taken from the statement made to Congress by Secretary of Defense Cheney preceding the report titled "Combined Annual Report to Congress on Standardization of Equipment with NATO Members and Cooperative Research and Development Projects with Allied Countries," dated June 1990.

**The Export Administration Act.** The first Export Administration Act was passed in 1949. In part driven by concerns resulting from the onset of the Cold War, the EAA sought to multilaterally restrict the transfer of sensitive technologies and end-products to Eastern Bloc countries. In 1949 the Coordinating Committee on Multilateral Export Control was formed. The committee included the NATO countries (except Iceland) and Japan and Australia. CoCom was formed "to coordinate allied export control policies."<sup>10</sup> The EAA was known from 1949 to 1969 as the Export Control Act.<sup>11</sup> This Act, and each succeeding version of the legislation, has primarily sought to govern the transfer or export of unclassified products and technology destined primarily for commercial use. Included in this legislation is the Commodity Control List, which regulates those items and technologies that could contribute to the military strength and capacity of a foreign nation or nations. Under the authority of this legislation, the transfer of such items can be restricted on either political or economic grounds.

Since the passage of the first EAA, Congress has been an active participant in the debate over export policy. Congressional legislation has focused on two main areas. First, Congress has sought to exercise control over what types of products can be exported and to whom they may be sent. Second, Congress has attempted to legislatively adjudicate interagency disputes. The primary legislative efforts took place in 1979, 1985, 1988, and 1990.<sup>12</sup>

The 1990 review of the EAA included a fundamental reevaluation of the trade restrictions aimed at the Eastern Bloc nations. Simultaneously, the executive committee of CoCom began a major re-examination and revision of the CoCom export controls. Agreement was reached within CoCom in June 1990 to substantially decontrol trade between the West and the Eastern Bloc. The Committee also agreed to work toward a streamlined "Core List" (subsequently completed in May of 1991).<sup>13</sup> The Senate Banking Committee then included

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<sup>10</sup>*Export Administration Act Amendments of 1990*, Report of the Committee on Banking, Housing and Urban Affairs, U.S. Senate. To accompany S. 2927, 101st Congress, 2nd Session, Report 101-399, p. 2.

<sup>11</sup> Op. cit.

<sup>12</sup>The Export Administration Act of 1979 is PL 96-72, Section 737 (September 29, 1979). The Export Administration Act of 1985 is PL 99-64, Section 883 (July 12, 1985). The Export Administration Amendments Act of 1988 was a part of the Omnibus Trade and Competitiveness Act of 1988 and became a part of PL 100-418. The Export Administration Act Amendments of 1990 became a part of PL 101-510.

<sup>13</sup>On May 24, 1991, the White House published a press release that stated that by September 1, 1991, a new Core List would be implemented. The new list represents a 50 percent reduction in the number of technologies and products covered by the CoCOM regime (this is in addition to a 30 percent reduction that was agreed to in June 1990). These adjustments were to respond both to the changing nature of the international political and military landscape as well as to the increasingly widespread availability of many technologies, particularly those related to personal computers, work-stations, and minicomputers.

the CoCom decontrols in the Senate version of the 1990 amendments to the EAA and established the CoCom list as the standard commodity list. The decontrols adopted by both CoCom and the final version of the EAA sent to the president for signature did not extend decontrols to the Soviet Union.

In addition to reevaluating the trade restrictions imposed on the Eastern Bloc, the 1990 amendments to the EAA also sought to address trade policy inequities that might place U.S. industry at a competitive disadvantage. Specifically, section 102 of the Act directed the Secretary of Commerce to evaluate license proposals in light of the recent CoCom changes to prevent U.S. firms from encountering license restrictions that were no longer imposed on firms from the other CoCom signatory nations. In addition, section 102 also required "the Commerce, State, and Defense Departments to report to the Senate Banking Committee and the House Foreign Affairs Committee . . . on the status of implementing the CoCom agreement . . ." <sup>14</sup>

On November 16, 1990, the president pocket vetoed the "Omnibus Export Amendments Act of 1990" (House Resolution 4653). His reasoning (according to Capitol Hill sources) was that the legislation was too restrictive, particularly in terms of executive power to make policy decisions relating to trade restrictions being placed on chemical and biological weapons sales. <sup>15</sup> The president announced that "Rather than sign this bill, I have chosen to take a series of steps under existing authorities to ensure that mutually shared objectives are met in a timely and effective manner." He then issued a directive that included the following statement, "By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the CoCom dual-use list unless significant U.S. national security interests would be jeopardized." <sup>16</sup> The Center for Defense Trade within the State Department was given the authority to oversee the process of harmonizing the U.S. Munitions List with the CoCom list. According to a recent State Department newsletter, this process was complicated by the fact that the CoCom executive committee began to re-evaluate its list just as the United States sought to bring its list in agreement with CoCom. The State Department asserts that now that CoCom has finalized its list, the process of harmonizing the two lists will be completed.

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<sup>14</sup>*Export Administration Act Amendments of 1990*, p. 6.

<sup>15</sup>Staff Members, Senate Banking and House Foreign Affairs Committee. Interviews with author, December 1990 and January 15, 1990, respectively. A "pocket veto" refers to legislation passed within ten days of a congressional recess left unsigned by the President.

<sup>16</sup>"President Directs USML Liberalization: USML-CoCom List Rationalization Underway," *Defense Trade News*, Volume 2, Number 1, January 1991, p. 6.

Two months prior to the president's pocket veto, the 1988 version of the EAA lapsed. In its place, the president issued Executive Order No. 12730 under the authority of the International Emergency Economic Powers Act (IEEPA). Executive Order No. 12730 allows all of the rules, regulations, and provisions of the EAA to continue in force until a new version of the EAA can be passed by Congress and signed by the president. As of publication of this Note, Congress has passed no new legislation, and the executive order is still in force.<sup>17</sup>

In recent years, the House and the Commerce Department have forged an alliance supporting a more relaxed export control regime. Although there has been tension between the House and Senate over general export restrictions on defense-related technology and products, there has been substantial agreement in three key areas. Both the House and Senate have supported tighter restrictions on the export of technology or products in the area of nuclear, chemical, or biological weapons. The aftermath of Desert Storm is likely to further strengthen this position.

**The Arms Export Control Act.** The Arms Export Control Act, first passed in 1976, governs the transfer of products or technologies destined for military use. The AECA finds its beginnings in the Neutrality Act of 1939, followed by the Mutual Security Act of 1954. The AECA sets down "the President's authority to control the export and import of defense articles and defense services (including exports of technical data related to defense articles) . . . [as well as] authorizing the President to promulgate regulations for the import and export of defense articles and defense services and to provide foreign policy guidance to persons involved in such exports and imports."<sup>18</sup> An executive order dated January 18, 1977, (EO 11958) delegated the authority described in the AECA to the Department of State, in consultation with the Departments of Defense and Commerce.

As stated at the outset of this section, the International Traffic in Arms Regulations provides the implementing language and regulatory provisions used to administer the Arms Export Control Act. The first version of the ITAR in its current form was published in 1955 and was issued pursuant to authority included in the Mutual Security Act of 1954.<sup>19</sup> The ITAR was revised once in 1980 and again in 1985. As authorized by section 38 of the AECA, the ITAR is primarily responsible for controlling the export and import of defense articles

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<sup>17</sup>*Executive Order 12730 of September 30, 1990, "Continuation of Export Control Regulations," published in the Federal Register/ Vol. 55, No. 191/ Tuesday, October 2, 1990.*

<sup>18</sup>This language was taken from the Federal Register, Volume 49, No. 236, p. 47682.

<sup>19</sup>This authority was included in PL 83-778, Stat. 848.

and services.<sup>20</sup> Subsequent to Executive Order 11958 (described above), the State Department delegated authority for these responsibilities to the Office of Munitions Control (which was recently reorganized into the Office of Defense Trade Control, as discussed below). The AECA also stipulates that the president must designate which products and services are "defense" related in nature. These items are listed in the U.S. Munitions List, which is included within the ITAR. Those items that are not defined as solely military in nature are not controlled by the USML and the ITAR and instead come under the jurisdiction of the Department of Commerce.<sup>21</sup>

All collaborative defense programs, just as similar programs being completed solely by U.S. firms, must pass through the export licensing processes delineated by the ITAR. The AECA, through the ITAR, also influences the review of coproduction and collaborative programs in that it stipulates that all export license applications that involve the sale of major defense equipment exceeding \$14 million in value, or total sales exceeding \$50 million, must be reported to and reviewed by Congress before the Department of State can issue an export license.<sup>22</sup> In addition, the AECA influences the prospects for collaborative programs by stipulating that the U.S. government (through the processes delineated in the ITAR) should "facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of cooperative exchange of data, research, development, production, procurement, and logistics support to achieve specific national defense requirements and

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<sup>20</sup>22 U.S.C., Section 2728. The ITAR also designates the manner in which manufacturers and exporters must register with the Department of State, outlines the procedures associated with granting export licenses for defense articles, delineates what is to be included in manufacturing license agreements, technical assistance agreements, and other defense services, provides for the licensing of exports of technical data and classified defense articles, and finally, establishes the administrative procedures and possible penalties associated with implementing all of the above.

<sup>21</sup>The USML is the U.S. equivalent of the CoCom Munitions List. The lists are not identical but are very similar in nature. In addition the USML serves a similar purpose to the Commodity Control List used by the Department of Commerce for dual-use items. See upcoming subsection on the Department of Commerce.

<sup>22</sup>See earlier discussion of this "notice and wait" review process. The congressional notification restrictions are included in sections 36(b), 36(c), and 36(d) of the Arms Export Control Act. There has been a great deal of frustration with the length of time it takes for the State Department to formally notify Congress that a licensing case has completed its internal State Department review and is ready to be reviewed by Congress. The Aerospace Industry Association (AIA) has been completing its own research to establish a database that includes the countries involved in the license request, the product, the total value of the sale, the date of agency approval, and the date that Congress was officially notified. AIA's initial results show that the average delay between agency approval and congressional notification, for the time period 1989-1990, was 208 days. The average value of the sales included in the AIA database was \$109 M. They have disaggregated these numbers to show that for a \$1-50 M package, the average delay is 210 days, for \$51-100 M package, the delay averaged 209 days, for \$101-200 M, the processing time averaged 224 days, and the only package valued at greater than \$200 M was still pending in February of 1991 (83 days to date).

objectives of mutual concern."<sup>23</sup> In this way, the AECA influences both the form and function of the oversight of collaborative programs. It accomplishes this principally in the matter of export licensing and also in determining which collaborative programs actually include products or technologies that come under the purview of the Department of State (those with a solely military end-use and thus included in the USML) and those that are dual-use in nature (and thus governed by the Department of Commerce through the Commodity Control List).

### **Protecting the U.S. Defense Industrial Base**

Public pressure to protect the U.S. defense industrial base (both voter and industry generated) has intensified the pressure on Congress to at least maintain, if not increase, current defense trade barriers. Legislative defense trade barriers include product-specific protections (such as those that protect ball bearings and machine tools) and more general provisions such as the Buy America Act.<sup>24</sup> Transatlantic partnerships may be at a disadvantage in the defense procurement bidding process if Buy America provisions require that the product or technology in question be produced by a domestic supplier.

The Buy America Act was first enacted in 1933 and was updated in 1959, 1960, and 1988. It "requires the Federal Government to buy domestic products unless such purchases are inconsistent with the public interest or their costs are unreasonable."<sup>25</sup> The allowable price differential on defense products is 50 percent. Domestic products are currently defined as those that are "assembled and manufactured in the United States, and substantially all of the total costs (including components, indirect costs, research, development, and labor) of the product has been incurred in the United States."<sup>26</sup> Collaborative partnerships may thus meet the stipulations of the Buy America Act if all of the assembly and manufacturing is taking place on U.S. soil and over 50 percent of the cost of the product has been incurred in the United States. Many collaborative partnerships do not satisfy these criteria. Few European firms are content today with participating solely as subcontractors to U.S. prime contractors in collaborative relationships. Most European firms are demanding that manufacture and assembly be shared more equitably across the Atlantic. Buy America provisions, however, can be waived in a number of circumstances. First, they may be waived under the authority of a negotiated reciprocal procurement MOU (discussed above). Second,

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<sup>23</sup>The Arms Export Control Act, 22 U.S.C. Section 2751.

<sup>24</sup>Title 50, Section 451 contains legislation protecting machine tools and ball bearings.

<sup>25</sup>Title VII, Buy America Act of 1988, PL 100-418, Section 7002.

<sup>26</sup>Ibid.



they may be waived as a result of changes in U.S. law required to implement the GATT Government Procurement Code (see below).

### **Maintaining U.S. Access to European Defense Markets**

During the 1987 Tokyo Round of the GATT multilateral trade negotiations, a set of multilateral agreements was adopted, including one entitled the "Agreement on Government Procurement." It sought to "secure greater international competition in the government procurement market . . . [and] to make laws, regulations, procedures and practices regarding government procurement more transparent, and to ensure that they do not protect domestic products or suppliers, or discriminate among foreign products or suppliers."<sup>27</sup> These changes were intended to make access into the government procurement process more equitable for all interested firms, be they foreign or domestic. All collaborative projects, by definition, include at least one foreign partner. These GATT changes, by making government procurement more accessible to foreign firms, necessarily also make it more accessible to collaborative partnerships.

It must be noted that Article VIII.1 of the agreement also makes the following exceptions:

Nothing in the Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.

Many industry representatives interviewed in the course of this study mentioned the Article VIII.1 exclusions to the GATT as being used by European GATT signatories, as well as the U.S. government, to the detriment of collaborative programs being attempted by U.S. and NATO firms. These representatives argued that both the United States and the European signatories use this provision to restrict competition on many procurement programs, using the argument that such competition would endanger a vital domestic industrial capability.

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<sup>27</sup>"Agreement on Government Procurement" Revised Text, General Agreement on Tariffs and Trade, Geneva, 1988, p. 4. According to the Introduction to the Agreement, "the most significant provisions of the adopted Protocol of Amendments are: the lowering of the threshold (minimum value of contracts) from SDR 150,000 to SDR 130,000; the inclusion of leasing contracts under the coverage of the Agreement; increased transparency through improvements in the exchange of information; the closing of several perceived loopholes; and, in general, bringing the Agreement more up-to-date with current procurement practices." It is also important to note that the GATT regime had been in place for over 30 years before there was any agreement on regulating government procurement.

### **Future Congressional Action**

According to congressional staff members interviewed during the course of this study, Congress is becoming increasingly concerned with the outcome of EC 92 and Europe's more general moves toward greater industry integration. There is an underlying fear that these changes may work to U.S. industry's disadvantage. As a consequence, there has been congressional pressure to increase the use of Buy America provisions, pressure on the director of the Office of Foreign Contracting within the DoD to renegotiate some of the reciprocal procurement MOUs, pressure on the State Department to increase the level of foreign service staffing responsible for assisting U.S. industry in Europe, and increasing pressure to consider stronger across the board protectionist trade and tariff legislation.

In light of the recent pocket veto of the Export Administration Act, the Senate has drafted new legislation more acceptable to the president. In February 1991, S. 320, the 1991 Export Administration Reauthorization, was submitted for debate. The new bill is very similar to the 1990 version, modified so that the executive branch has greater latitude in making decisions concerning trade restrictions on chemical and biological weapons sales. In November 1991, the House passed its own version of the legislation. As of August 1992 no conference committee has met to resolve the differences in the competing versions of the bill.

Congressional staff members interviewed about future prospects for the Nunn cooperative R&D programs expressed general disappointment with the programs thus far and predicted that future funding would continue to decline. Congress put a great deal of pressure on the DoD to negotiate a large number of MOUs because it hoped to get the Nunn programs up and running quickly. As a result, the uniformed military Services were encouraged to begin a variety of cooperative programs that did not have strong internal Service support. In general, too many marginal programs were funded out of the Nunn funds. Congress did not expect the Services to use Nunn funds to support core-level programs. However, it is hoped that as overall defense funding declines, the Services will have an incentive to use Nunn funds for at least mid-level programs. Current seed-level funding stands at \$85 million per year. Initially, the Nunn programs were authorized at \$200 million per year (and appropriated \$150 million). Congressional staff members interviewed predicted that funds in the future would hold at \$85 million per year.

### **THE DEPARTMENT OF STATE**

In January of 1990, the State Department's Bureau of Political Military affairs was reorganized and a new office, called the Center for Defense Trade, was created. Within the Center for Defense Trade, two offices were established: the Office of Defense Trade Controls

(DTC) and the Office of Defense Trade Policy (DTP). The following is a breakdown of the primary responsibilities of both offices.

**The Office of Defense Trade Control:**

- Administers the International Traffic in Arms Regulations and thus exercises primary responsibility over munitions control.<sup>28</sup>
- Reviews all license applications for "the export of defense articles, services, and technology."<sup>29</sup>
- Bears responsibility for determining and reviewing which commodities should be regulated with the U.S. Munitions List.
- Maintains a database on dual-use trade, from which it provides regular reports to Congress.

**The Office of Defense Trade Policy:**

- Completes policy analysis to support and direct the work of the Office of DTC.
- Directs U.S. embassy staffs in their efforts to support international business projects being completed by U.S. defense firms.
- Serves as the U.S. agent at all CoCom negotiations concerning the International Munitions List (IML).
- Distributes a publication entitled, "Defense Trade News." This publication focuses on issues related to licensing, embassy staffing, legislative changes (such as the debate surrounding the Export Administration Act), and internal policy changes at State.

The caseload in the area of munitions control has been steadily increasing, and as a consequence, the State Department has had to reevaluate its processing procedures in order

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<sup>28</sup>The ITAR is the implementing language for the Arms Export Control Act, which should not be confused with the Export Administration Act and the Export Administration Regulations. The ITAR and the AECA are administered by the Department of State and govern products and technologies that are solely for military use. The EAA and the EAR are administered by the Department of Commerce, and they regulate products and technologies that are dual-use in nature. The EAA and the EAR will be discussed at greater length in the upcoming subsection on the Department of Commerce.

<sup>29</sup>Descriptions of the DTC and the DTP are taken from a pamphlet entitled "The Center for Defense Trade," U.S. Department of State Publication 9808, Bureau of Politico-Military Affairs, August 1990.

to keep the licensing process from being even more time consuming.<sup>30</sup> Once the new office was authorized, additional resources were allocated to munitions control.<sup>31</sup> The office of Defense Trade Controls handles 55,000 licensing cases per year. Approximately one-quarter of these cases are adjudicated entirely within the State Department. Three-quarters of the cases must be referred to other members of the U.S. national security community (DoD, Commerce, and the National Security Council [NSC]) for additional technical or policy guidance. According to the most recent Director of the Office of DTP, Robert Pace, munitions control decisions made without outside input averaged two weeks to process and now take approximately four days. On decisions that required outside input, response time had reached 70+ days and has now been reduced to 36.

### Looking Ahead

Partly in response to industry demand, the Office of Defense Trade Policy has been attempting to generate a senior-level policy statement on the issue of defense trade and collaboration. The most recent such statement was made by then-President Reagan in 1981. The DTP office has attempted to generate support for either a presidential or secretary of state-level statement. This has not been supported thus far. In the interim, a statement was issued on July 10, 1990, by the Acting Secretary of State Lawrence Eagleberger emphasizing the importance of defense exports, trade, and collaboration.<sup>32</sup> The statement was made available to all U.S. embassies in the hopes that it would reinforce the perception that the U.S. government is behind industry efforts to pursue foreign military sales and cooperative defense programs and that embassy personnel, including ambassadors, would redouble their efforts to support industry in this area.

The State Department appears to be interested and willing to assist industry in its efforts to continue existing cooperative programs or to initiate new ones. In this area, however, as in many others, those at the action level (such as the directors of the DTP and DTC offices) are very dependent on the policy guidance they receive from their superiors at

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<sup>30</sup>According to *Finding Common Ground: U.S. Export Controls in a Changed Global Environment*, Panel on the Future Design and Implementation of U.S. National Security Export Controls, National Academy of Sciences and Engineering, National Academy Press, Washington, D.C., 1991, (Hereinafter referred to as *Finding Common Ground*) the Office of Defense Trade Policy processed 54,000 munitions licenses, with a total value of \$57 billion in 1989. Even with the increasing numbers of munitions licenses being processed, according to the DTC, the average processing time fell to 49 days in 1989 from 61 days in 1987.

<sup>31</sup>According to the January 1991 edition of the *Defense Trade News*, a State Department publication, the old Office of Munition Control had 36 staff members. The new Defense Trade Control office has 66 staff members (of which 7 are contractors). "Export Licensing: The Year in Review," *Defense Trade News*, Volume 2, Number 1, January 1991, p. 3.

<sup>32</sup>This message is known in industry as "The Eagleberger Cable." See Section 3 for further references to this cable.

State, and, perhaps more importantly in the direction, that they get from both Congress and the executive branch. If the tide shifts toward a more protectionist, U.S.-centered policy on defense trade issues, the DTP and DTC staff will adjust accordingly. On the other hand, if Congress and the executive branch pass legislation and make public declarations in support of increased defense trade and cooperative programs with our NATO allies, the DTP and DTC offices are now staffed such that they could easily and effectively respond with relevant new policies and programs. Agencies, such as those housed at State, are very much dependent on the type of higher level guidance they are given concerning what their offices should be trying to accomplish. Until the policy statements and legislation emanating from Congress and the executive branch are clearer, the jury will be out on the direction that State will be headed in terms of managing and facilitating cooperative programs.

## THE DEPARTMENT OF DEFENSE

### DoD Directives

Two DoD directives serve as the primary guidance used to review and approve coproduction and other forms of collaborative agreements. DoD Directive 2000.9 (last updated in 1974) stipulates that legal clearance from the DoD General Counsel must be granted on all proposed agreements. In addition, a semiannual report concerning all cooperative programs must be made by the relevant DoD offices to the Assistant Secretary for Installations and Logistics.<sup>33</sup> DoD Directive 5530.3, adopted in 1987, grants authority to the Under Secretary of Defense for Policy for "controlling negotiation and conclusion of all international agreements of policy significance, including coproduction agreements."<sup>34</sup> Directive 5530.3 also stipulates that the Defense Security Assistance Agency (DSAA) bears responsibility for overseeing coproduction agreements that are included in the security assistance program. A third directive, enacted by the Secretary of Defense in 1985, required that cooperative opportunities be identified and evaluated at every acquisition milestone. This directive has since been made a legal requirement on all major weapon systems.<sup>35</sup>

In addition to the two DoD directives described above, DoD policy concerning the oversight and management of cooperative programs has gradually been codified as a result of the DoD's participation in a number of organizations involving our NATO allies. These groups include the Conference of National Armaments Directors (CNAD), the Senior NATO

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<sup>33</sup>*Military Coproduction*, GAO 1989, p. 13.

<sup>34</sup>*Ibid.*, p. 12.

<sup>35</sup>10 U.S.C., Section 2350a (e) requires that a "Cooperative Opportunities Document" be completed at each acquisition milestone.

Logisticians Conference (SNLC), the NATO Standardization Group (NSG), the NATO Air Defense Committee (NADC), and the NATO Maintenance and Supply Agency (NAMSA).

The Office of International Programs and Technology in the Office of the Under Secretary of Defense for Acquisition (OUSDP [IP]) is the office within the DoD that is officially responsible for facilitating collaborative programs. However, many other offices dramatically influence the nature of DoD collaboration policy. In its role as overseer of technology security policy for the Undersecretaries for Policy and Acquisition, the Defense Technology Security Administration (DTSA) influences the development and implementation of collaborative programs. Technology transfer is regulated by the DoD through the language incorporated in DoD Directive 2040.2, *International Transfer of Technology, Goods, Services, and Munitions*. This Directive stipulates that international transfers of technology must be consistent with overall U.S. foreign policy and national security goals. Furthermore, the directive states that defense-related technology may only be transferred to those nations who "cooperate effectively in safeguarding" such technology from those nations whose interests are "inimical" to those of the United States.<sup>36</sup> DTSA also works with DSAA in implementing the language of DoD Directive 5530.3 (described above). DTSA coordinates with DSAA to encourage including technology security risk assessments and technology control plans in newly negotiated MOUs.<sup>37</sup>

### **Restructuring the DoD Regulatory Framework**

In 1981, a DoD Task Group on International Coproduction/ Industrial Participation Agreements was established to address a wide range of issues in international arms collaboration. Its membership was comprised of both Service and Office of the Secretary of Defense (OSD) representatives and sought to "integrate the views of industry and DoD managers with its own corporate experience. . . ."<sup>38</sup> The conclusions of the task force were far from ground-breaking in their nature and instead sought primarily to reinforce existing DoD policy guidelines. The task force recommended that the DoD continue participating in arms collaboration efforts, with the caveat that the DoD should focus more selectively on whether U.S. interests were actually being served by the collaborative program. The report strongly supported industry participation in all aspects of collaborative project development and argued that "technology transfer considerations should be integrated into the collaborative

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<sup>36</sup>Dr. Somner Benson, "The Technology Transfer Dimensions of U.S. Military Assistance," *The DISAM Journal*, Fall 1990, p. 18.

<sup>37</sup>Ibid.

<sup>38</sup>*International Coproduction / Industrial Participation Agreements*, Report of the Department of Defense Task Group, August 15, 1983, p. 2.

program process.”<sup>39</sup> The only policy recommendations that addressed the need for new DoD efforts were in the areas of evaluating and focusing special attention on collaborative programs that had “major ramifications” and in clarifying and streamlining the process by which programs were reviewed, coordinated, and negotiated.

In the mid 1980s, William Howard Taft, then Deputy Secretary of Defense, and Dennis Kloske, then Special Assistant for Armaments Cooperation, set up what was informally known as the “Kloske Group” and more formally known as the “Defense Cooperation Working Group.” Kloske chaired the group and participants included the Director of NATO Policy, representatives from Acquisition, Program Analysis, and Evaluation (PA&E), and the Services. The group was motivated in part by the same factors that had driven Congress to pass the Nunn Amendment in 1985 (desire to promote RSI, increase burden-sharing, and more generally promote cooperative programs) but was also influenced by a desire within the DoD to increase the internal coordination of the various offices responsible for handling armaments cooperation. The working group began with a monthly meeting schedule but eventually stopped holding meetings and ceased to exist.

In 1990, a number of members of the armaments cooperation community within the DoD discussed the possibility of going beyond a group such as the one established by Kloske and instead creating a separate office responsible for coordinating all DoD activities in the area of armaments cooperation.<sup>40</sup> Many of the participants in this effort argued that armaments cooperation policies were being implemented by too many separate offices within the DoD. They went on to assert that the process had become both confusing and cumbersome. Dale A. Vesser, then the Assistant Deputy Under Secretary of Defense for Resources and Plans authored a memorandum in July 1990 that outlined the structure and proposed responsibilities of the new office. He stated, “To avoid enmeshing this office in the perennial Policy/Acquisition turf battles, the office should be established under the aegis of the Deputy Secretary of Defense with the responsibility to track cooperation issues across the DoD staff and to make sure that major issues and programs are brought to the attention of senior policy makers.” He proposed a small initial staff, headed by a career Senior Executive

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<sup>39</sup>Ibid.

<sup>40</sup>Internal Department of Defense Memorandum from Col. Robert Bruce, Assistant for Armaments Cooperation, within the International Security Policy (ISP) office under the Office of the Assistant Secretary of Defense, to Mr. Bruce Weinrod, then within ISP. Participants in the debate over establishing a joint office included the Deputy Assistant Secretary of Defense for European and NATO Policy, the Office of the Director of NATO Policy, and the Assistant Deputy Under Secretary of Defense for Resources and Plans. Paul Wolfowitz, the Under Secretary of Defense for Policy, supported the proposal and drafted an internal DoD Memorandum to the Deputy Secretary of Defense outlining the role and design of the new office and his reasons for supporting its establishment.

Service officer (SES). Eventually, this proposal, much like the Kloske group before it, quietly disappeared.<sup>41</sup>

#### **Future Organizational Changes at the DoD**

In the past year, the DoD, in conjunction with the Departments of State and Commerce, has established an informal defense trade working group. The working group was formed in response to increasing pressure from the U.S. defense industry to re-evaluate and revitalize current interagency policy concerning defense trade and cooperative programs.<sup>42</sup> The working group was divided into four sub-groups: (1) European Defense Economic Cooperation (headed by a representative from State), (2) Defense Market Opportunities (headed by a representative from Commerce), (3) Defense Trade Financing (headed by a representative from State), and (4) Third Country Transfer Policy (headed by a representative from DTSA and DSAA). The sub-groups have been meeting on a monthly basis seeking to generate informal recommendations that participants will then carry back to their sponsoring organizations for implementation. U.S. defense industry representatives have been invited to present policy proposals at a number of the sub-group meetings. Given the mixed political climate that currently surrounds defense trade and defense cooperation issues, it is likely that informal structures such as the one described here will be the most common method for dealing with these issues. The Department of Defense is unlikely to launch a major reorganization of regulatory responsibility unless both congressional and executive branch policies in this area coalesce strongly behind a specific approach. Particularly in light of the continuing debate over the distribution of responsibility between the Under Secretaries of Acquisition and Policy, as well as the ongoing discussions over who should be responsible for technology issues (a technology czar has been proposed), it is

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<sup>41</sup>Internal Department of Defense Memorandum for the Under Secretary of Defense for Policy through the Principal Deputy Under Secretary of Defense for Strategy and Resources, from Dale A. Vesser, the Assistant Deputy Under Secretary of Defense for Resources and Plans (Coded I90/13539), dated July 27, 1990.

<sup>42</sup>The Terms of Reference for the Defense Trade Working Group state that the Group should focus on the following issues: "(1) the need for a Presidential statement of policy on arms transfer/defense sales issues; (2) U.S. Government policy on defense export financing, including ExImBank role; (3) Technology transfer in co-production and co-development Memoranda of Understanding; (4) Offsets policy; (5) Coordination of government actions to facilitate or promote legitimate defense trade generally, as well as focused attention on specific export cases when deemed appropriate; and (6) Develop coordinated plan to identify and disseminate market opportunity information." Specifically, the sub-group on European Defense Economic Cooperation stated that its agenda included the following, "monitor European defense production and trade cooperation, including the activities of the Independent European Program Group (IEPG) and the European Community and links between the two . . . follow NATO consideration of defense trade issues, including the activities of the recently formed Defense Trade Task Force under the Conference of National Armaments Directors (CNAD) . . . serve as a clearinghouse for information, as well as a forum for discussing potential problems in U.S.-European defense trade and collaboration and how to address them."



unlikely that any major changes will occur in the roles and organization of DTSA, DSAA, the NDPC, or any of the offices within Acquisition and Policy that handle the monitoring of Nunn programs, negotiate MOUs, and the like.

## THE DEPARTMENT OF COMMERCE

The Department of Commerce is primarily responsible for regulating and assisting in the international trade of commercial products. In addition, the Commerce Department has been granted the authority to promote and oversee the export and reexport of dual-use products and technologies. Dual-use products are defined as those that are of commercial origin but whose end-use can include military applications. The agency within Commerce with oversight authority over dual-use products and technologies is the Bureau of Export Administration (BXA).

The BXA was established in 1987 so that oversight over export promotion and export control would be handled separately. The BXA "is responsible for coordinating and administering U.S. national security, foreign policy, and short supply export controls."<sup>43</sup> The BXA is divided into two departments, Export Administration and Export Enforcement. These two departments handle a wide variety of responsibilities that impact cooperative defense programs. First, the BXA has the authority to enforce, analyze, and update export control regimes (including the Missile Technology Control Regime, the Nuclear Non-Proliferation Regime, and the Supercomputers Regime) as they relate to dual-use products and technologies.<sup>44</sup> Those commodities regulated by Department of Commerce export control regimes are listed in the Commodity Control List.

The Office of Export Licensing, within the BXA, handles the export licensing of all dual-use products. The Commerce Department reports that the BXA processed 81,000 individual dual-use license applications in 1989. These licenses were valued at over \$132 billion.<sup>45</sup> Licenses for dual-use products come in two forms. "General licenses" require no application. The exporter (a U.S. firm seeking to send technologies or products to a European partner) determines that a general license is available by consulting the language of the Export Administration Regulations. If a general license is not available, the U.S. firm must apply for a "validated license." Reexport authority can also be applied for at the time of

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<sup>43</sup>"Federal Regulatory Directory" (Washington, D.C.: *Congressional Quarterly*, 1990), p. 595.

<sup>44</sup>All commodities and technologies that are under the exclusive control of another agency are exempted from the Commerce Department control regimes. Products and technologies that are strictly military in nature are controlled by the Arms Export Control Act (through the implementing language included in the International Traffic in Arms Regulations) and are thus under the sole jurisdiction of the Department of State.

<sup>45</sup>*Finding Common Ground*, p. 16. The Department claims that processing time decreased from an average of 28 days in 1985 to 17 days in 1989.

application for a validated license. In the event that a U.S. firm does not initially receive authority for reexport but eventually decides that they wish such authority, they must apply for a "reexport authorization."

In addition to its role in processing dual-use license applications, the Defense Authorization Act of 1989, Section 824, granted the Department of Commerce the right to participate in the process of negotiating and renegotiating defense MOUs.<sup>46</sup> MOUs are written and negotiated by the Services. Once completed, they are sent to either DSAA or the appropriate office within Acquisition in DoD. One of these two offices must then forward a draft copy of the MOU to the National Security Preparedness Division, Office of Industrial Resource Administration at Commerce. Within a three-week window, the Department of Commerce is now required to review the industrial base impact of the MOU and then forward a statement of either concurrence or non-concurrence back to the DoD. Commerce does not have the authority to veto a proposed MOU, only to provide comment and a recommendation. According to the Department of Commerce, their goal is to "assess the potential effects of an MOU on the U.S. economic position, trade position, and industrial competitiveness."<sup>47</sup> There has been considerable debate about this additional responsibility. Many of the industry representatives interviewed in this study held strong beliefs about the new role for Commerce.

### **Future Policy and Procedures**

Analysts and policymakers interviewed at the Department of Commerce echoed much of the sentiment articulated by those at the Department of State concerning future trends in oversight. They asserted that at present, they are working to better implement congressionally mandated policy changes (particularly relating to MOUs) as well as updating the various control regimes under their purview to reflect changes in technology and changes in the world political situation. They argued that it is as yet still unclear to them which direction Congress and the executive are headed in terms of regulating and encouraging either defense trade or cooperative programs between the United States and our European allies. Until this policy direction has more focus, they will be unable to predict what sort of changes are likely to occur in this area at Commerce. They also argued that they are now staffed and ready to respond to both world changes and legislative or executive level changes in both declaratory and employment strategies in defense trade and cooperation.

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<sup>46</sup>The Defense Authorization Act of 1989 became PL 101-189 (see Section 824).

<sup>47</sup>From an internal Department of Commerce briefing entitled "Review of Defense MOUs: Department of Commerce Role." Briefing prepared by the National Security Preparedness Division, Office of Industrial Resource Administration. No date available.

## **AUTHORITY ESTABLISHED BY EXECUTIVE ORDER: THE NATIONAL DISCLOSURE POLICY**

The National Disclosure Policy (NDP) has a complicated history. Its origins can be traced to an informal agreement between the Departments of State, War, and Navy in 1934 to consult between themselves before any defense-related products were shipped to another country. In 1944, the three Departments agreed that not only should the export of defense-related products be regulated, but the transfer of defense-related information should also be monitored. In February of 1947, President Truman approved the "Basic Policy Governing the Disclosure of Classified Military Information to Foreign Governments," which officially codified U.S. policy. Since then, the National Disclosure Policy has been modified on a number of occasions. Major new policy statements or reaffirmations of existing policy were released in 1958, 1964, 1971, and 1978.<sup>48</sup> The NDP is currently under review by the Bush Administration.

The NDP plays several roles. It seeks to regulate the foreign release or transfer of "classified information produced by or for the Department of Defense, such as collateral military intelligence, military training and organization, order of battle information, and joint or combined military planning. . . . It does not control communications security equipment/information, atomic information, or signals intelligence equipment/information," which are regulated separately.<sup>49</sup> National Security Decision Memoranda (NSDM) 119 provided the authority to disclose classified information to foreign governments. The NSDM is implemented through an interagency document titled "National Policy and Procedures for the Disclosure of Classified Military Information to Foreign Governments and International Organizations." Final authority over the NDP is shared by the Secretaries of State and Defense.

The Secretaries established a committee (the National Disclosure Policy Committee—NDPC) to hear and evaluate all requests for exemptions to the NDP. The NDPC consists of "general" members, including representatives for the Secretary of State, the Secretaries of each Service, the Chairman of the Joint Chiefs of Staff (JCS), and the Secretary of Defense. In addition, there are a number of "special" members who include representatives from the Secretary of the Department of Energy, the Director of Central Intelligence, the Under Secretary of Defense for Policy (USD[P]), the Under Secretary of Defense for Acquisition (USD[A]), the Assistant Secretary of Defense for Command, Control, Communications, and

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<sup>48</sup>A complete history of the NDP and the NDPC can be found in *History of the NDPC*, published by the NDPC (no date available).

<sup>49</sup>"Selling to the Allies," p. 9.

Intelligence (ASD[CCI]), the Assistant to the Secretary of Defense (Atomic Energy), the Director of the Defense Intelligence Agency, and the Director of the Strategic Defense Initiative Organization (SDIO). All requests for exemption to the NDP must be sponsored by a Service representative. General members of the committee are required to vote on all cases. Special members only vote on those cases that fall under their jurisdiction. All decisions must be made with a unanimous vote. In the event that a decision cannot be reached that is supported by all participating representatives, authority for the final decision rests entirely with the Chairs of the Committee. Appeals are registered with the Office of the Under Secretary of Defense for Security Policy.

The NDPC hears approximately 100 exemption requests per year, nearly all of which are granted. Service sponsors generally withdraw their requests early in the process if it appears that the exemption will not be granted. In addition, very few appeals to NDPC decisions are ever made. According to the executive secretary of the NDPC, in the period from 1980 to 1990, five appeals were initiated, one of which was granted.<sup>50</sup>

## SUMMARY

The preceding section clarified two issues critical to an understanding of transatlantic collaboration. First, the lines of authority between Congress, the executive, and the three key departments are consistently interlinked. Few, if any, decisions relating to collaborative programs can be made by one policy-making body acting alone. Nearly all areas of regulatory responsibility are shared across at least two departments, or just as frequently, shared within multiple offices within the same department. Second, the four key policy goals discussed in the introduction have been directly reflected in the regulatory structure governing transatlantic collaboration. Just as these policy goals are divided in focus and intent, the responding regulatory structure often works at odds with itself. Regulatory responsibilities designed to protect the defense industrial base and prohibit the transfer of sensitive products and technologies often work in opposition to those employed to further RSI and burden-sharing or maintain access to European defense markets. The following section of this Note addresses how these issues have affected the U.S. defense industry in its efforts to pursue collaborative programs.

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<sup>50</sup>Most disclosure decisions do not require official exemptions to the NDP. Over 12,000 disclosure decisions are made each year. Most of these are delegated to members of the national security establishment rather than being reviewed by the entire NDPC. Delegated decisions must involve information that falls within certain delineated levels of classification, and the countries to whom the material is being released must have been evaluated by the NDPC to determine "their capability and intent to protect classified information" through the "completion of a favorable on-site security survey and the negotiation of a General Security of Military Information Agreement (GSOMIA)." Source: National Disclosure Policy Fact Sheet, 1990.

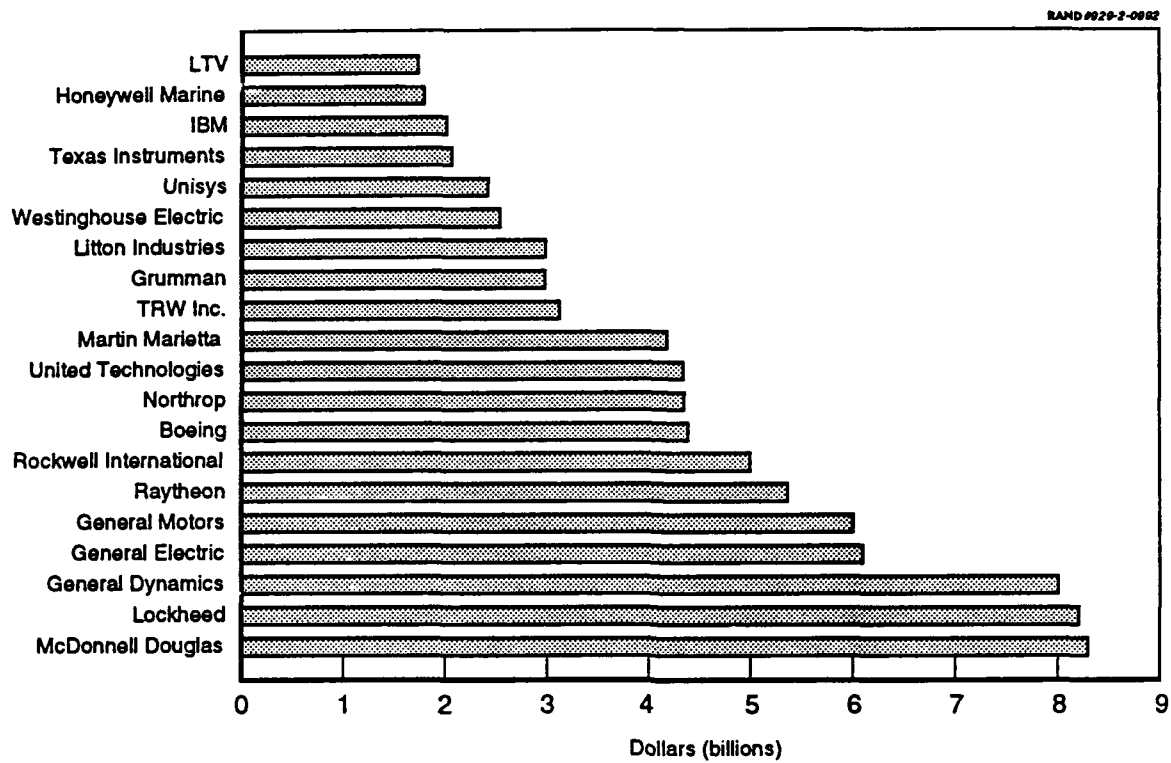
### **3. U.S. DEFENSE INDUSTRY INTERVIEWS**

#### **INTRODUCTION**

In the process of completing this Note, I interviewed senior level managers at 15 of the top U.S. defense firms. Senior level managers were contacted at all of the top 20 defense firms (based on defense-related revenues, see Figure 2). The firms represented here were those who agreed to participate in the study. In addition, two firms were included that do not fall within the top 20 (E-Systems and Intergraph). Both of these firms have had extensive experience in international cooperative programs as well as in direct exports and were a valuable addition to the data collected. Because of the small sample size (15) in this observational study, and the qualitative nature of the questions asked, statistical tests performed on the data collected would provide highly questionable results. What follows is a description of the types of managers interviewed and a summary and analysis of the general trends discernible in the data.

#### **DATA AVAILABLE ON COOPERATIVE PROGRAM PRODUCTION AND REVENUE FIGURES**

Very few data are currently available on cooperative program production or revenue figures. Almost every firm involved in this study had a different methodology for tracking production and revenue figures for international cooperative programs or had not begun to identify such programs separately from any other form of production or revenue generation. The DoD has issued a number of papers and statements in which they assert that 3 percent of total defense production is being generated in cooperative programs. During the course of this study, we contacted representatives of all of the 15 companies interviewed in an effort to calculate what percentage of production and sales revenue cooperative programs had generated (See Table 1). None of the firms interviewed track such numbers as a common accounting practice. A few were able to identify those sales generated by a select number of high-visibility programs. In general, they were not able to report cooperative program production and sales figures or percentages. International cooperative programs are not consistently reported in any single accounting category across firms. For example, some firms report foreign military sales (FMS) as U.S. government defense sales and some report them on the international side of their revenues. International co-production revenues are often accounted for under the FMS rubric, and thus are sometimes reported as domestic sales and sometimes as international sales. In cooperative program accounting, there are no hard



**Figure 2—Top 20 U.S. Defense Firms Arms Sales in Billions of Dollars**

**Table 1**  
**Firms Represented**

Name	Rank by Arms Sales
Alliant Tech Systems*	19
E-Systems	NA
General Dynamics	3
General Electric	4
Intergraph	NA
Lockheed	2
LTV	20
Martin Marietta	11
McDonnell Douglas	1
Raytheon	6
Rockwell	7
TRW	12
UTC (Pratt & Whitney)	10
UTC (Sikorsky)	10
Westinghouse	15

\*Formerly Honeywell.

and fast rules. It is difficult to assess how concerned the government should be about cooperative programs without a better understanding of how much business and sales revenue is being generated by such projects. Because these data are so difficult to generate, researchers are dependent on the outcome of interviews, such as those completed here, to draw conclusions about industry efforts and plans in transatlantic cooperation.

### **Types of Managers Interviewed**

The managers interviewed fell into three broad categories: vice presidents and directors (or the equivalent) in charge of international business development; program managers in charge of cooperative programs (both Nunn and non-Nunn sponsored efforts); and managers in charge of export licensing. Most of the managers interviewed are listed in the appendix. Managers in each category were asked a series of qualitative research questions as well as a short initial set of questions that required only yes/no responses. These questions focused on three main areas. First, they addressed the firm's previous involvement in cooperative programs. Such questions included whether the firm had participated in any of the Nunn-sponsored cooperative programs, whether the firm had initiated any cooperative programs outside of the Nunn framework, and whether the corporation assessed these efforts as successful. The results of these questions will be addressed in the next part of this section. The managers were then asked a second set of qualitative questions concerning the various departments (primarily Commerce, State, and the DoD) that regulate transatlantic collaboration. These questions focused on identifying the strengths and weaknesses of each of these departments in how they manage cooperative defense programs and defense trade. In addition, this area of questioning sought to identify how the overlapping lines of authority addressed in Section 2 affect U.S. industry behavior. The third main area addressed in the interviews was describing and analyzing company assessments of the implications of both U.S. policies and the market challenges that may result from EC 92 and the resulting corporate plans for industry- and government-initiated cooperative programs.

Finally, although these interviews focused primarily on how U.S. government policies and procedures affect U.S. firms in their efforts to initiate and implement collaborative programs, it is important to note that many of the managers interviewed noted problems they face in collaborative programs that are caused not by the U.S. government but by policies and procedures implemented by European governments. In particular, these complaints centered around the difficulties U.S. firms face in marketing defense products in Europe, whether within or outside of collaborative efforts. First, U.S. firms are faced with

differing procurement regulations and procedures in each of the allied countries as well as vastly differing requirements between countries. In addition, the individual defense markets within the NATO countries are quite small, making collaborative efforts with a single NATO partner less likely to generate a profitable production run. This leads to a Catch-22 in which collaborative projects that span more than one European nation are afflicted with a wide variety of management problems because each NATO participant, as well as the U.S. partner, has its own set of procurement procedures and military requirements. Still collaborative programs with many partners also increase the probable profitability of the program. Similarly, fewer partners lead to less risk and fewer coordination problems, but smaller partnerships are also less likely to generate enough sales to make the whole effort worthwhile.

#### PAST AND ONGOING COOPERATIVE PROGRAMS

Of the 15 firms represented in this study, 10 had participated in at least one of the Nunn-sponsored cooperative programs (several had participated in more than one), and all 15 had some experience in at least one form of cooperative program. Of the ten who had participated in Nunn programs (see Figure 3), only three had experienced what they defined as "success" with the programs. The primary commonality between the three programs was that they had not been cancelled by the U.S. government. It is important to note that two of

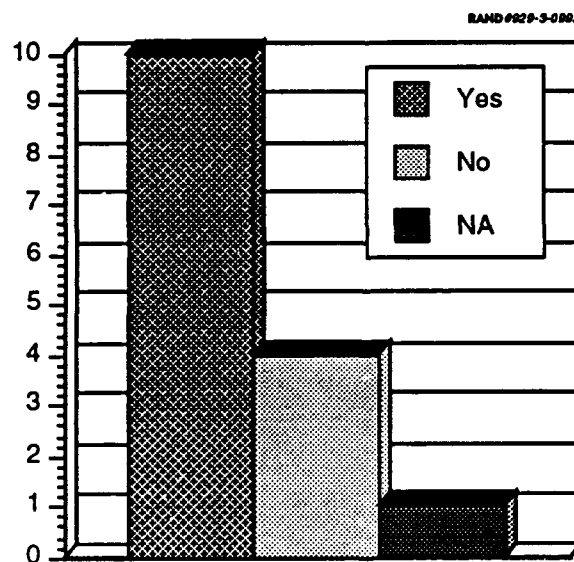


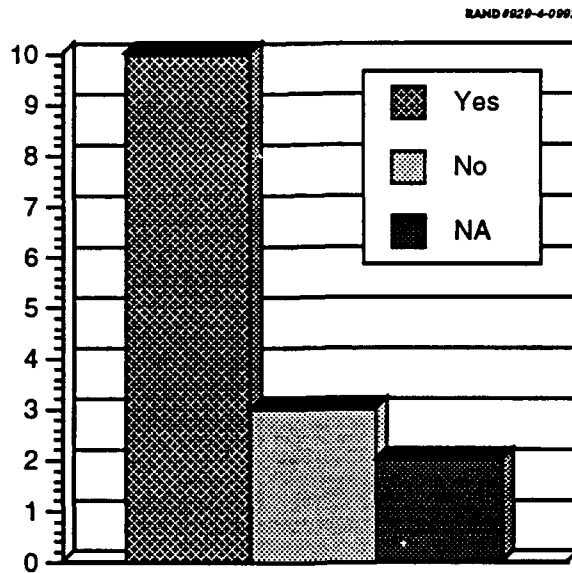
Figure 3—U.S. Firms Involved in Current Nunn Programs



these three "successful" programs had been launched by industry and received Nunn funding as a helpful, though not essential, afterthought. Both of these firms stated that they would have completed these programs notwithstanding the Nunn funds.

The common factors in the seven programs that were defined as failures ("failure" was most commonly defined as a program canceled by the U.S. government) are less obvious. They were a mix of both industry-initiated and government-initiated projects. Nearly all of the companies asserted that the programs had been of low priority to the sponsoring service and were therefore more likely to receive the budget ax before other higher priority systems. All of the seven stated that U.S. policy toward cooperative programs in general, and Nunn programs more specifically, is internally contradictory and inconsistent and thus lessens the likelihood that programs will survive through the production phase. These contradictions include those laid out at the outset of this Note (the tension between policies that support RSI and burden-sharing, such as the Nunn programs, and policies that serve to prohibit technology transfers so as to prevent our enemies from profiting from our discoveries, as well as measures taken to protect our defense industries from outside competition) but further focused on the tensions inherent within single agencies in the U.S. government. A specific example that was repeated by a number of firms focused on the countervailing efforts of the offices within the DoD responsible for assisting and overseeing cooperative programs under the Nunn umbrella and those responsible for restricting technology transfers (which are nearly always necessary in order to complete a cooperative program).

From the total sample, ten of the firms expressed skepticism about both current and future Nunn-sponsored efforts, two were positive, and three were neutral. Even given their skepticism, only three firms stated that they had no interest in future Nunn efforts. Ten firms stated that they would be open to new Nunn projects, and two did not make this information available (see Figure 4). Responses concerning the Nunn programs ranged from program managers who spoke favorably of the Nunn program concept and implementation to those who not only felt that the specific program in which they had participated had been a failure, but that the perceived failure of the Nunn programs had adversely affected the chances of success for many other projects (both programs under the Nunn umbrella and those initiated by industry and therefore theoretically outside of its reach). One company in particular stated that the European firms, which had been involved before the U.S. government pulled out of the project, felt very betrayed. The U.S. firm was unsure whether its European partner would be willing to participate in another Nunn-sponsored program or any other type of cooperative venture that involved a U.S. partner.



**Figure 4—U.S. Firms Interested in Future Nunn Programs**

Of the ten firms currently involved in the Nunn programs, nearly all had experienced severe bureaucratic difficulties attempting to complete their projects. Problems included an inability to efficiently co-locate engineers on U.S. plant sites (primarily because the U.S. government was unwilling to grant U.S. security clearances to foreign engineers working on cooperative programs—even to those from the United Kingdom—and without clearances the engineers could not work on U.S. sites unless they were supervised at all times). Another problem was that the U.S. government has repeatedly denied requests that would have allowed U.S. engineers with any defense background to work abroad under the auspices of a cooperative program. Managers with these problems argued that European firms do not experience similar difficulties with their own governments. For example, one of the firms that stated that they had experienced difficulties in co-locating engineers on U.S. sites asserted that they had had no difficulty doing so on the partner's site abroad. Similarly, one of the firms that cited problems in sending U.S. engineers abroad who had had experience working on other U.S. defense programs stated that foreign engineers were sent freely to the United States, regardless of their background in other defense work.

#### **COMMERCE, STATE, AND THE DOD: OVERSIGHT AND MANAGEMENT CONCERNS**

During the second part of the interviews, the focus shifted to industry evaluations of the strengths and weaknesses of the three main departments responsible for overseeing most

aspects of cooperative programs. In addition, the industry representatives were asked to identify issues that were of particular concern to their firm (these were frequently product- or market segment-specific issues) or other broader policy concerns that might not fit neatly within the rubric of the three departments I had identified.

### **The Department of Commerce**

The managers interviewed were generally supportive of what they frequently referred to as "The Commerce Approach" to dealing with cooperative programs and more generally with arms trade. By this managers were generally referring to their belief that Commerce generally takes a pro-business stance in its policy-making decisions. Industry's general support for Commerce is certainly not surprising given the department's history of working to support policies that facilitate U.S. business interests, both at home and abroad. What was surprising was the nearly universal dissatisfaction with the increased authority Commerce has been given in participating in the MOU review process. One would have predicted that given industry's generally favorable feelings about Commerce, industry would see an increased role for Commerce as a positive change. Only two firms interviewed stated that they were strongly in favor of the new Commerce responsibilities (one of the two suggested that Commerce should be allowed to participate even earlier in the licensing and MOU negotiation process). Six of the firms were opposed to the changes, stating that Commerce does not have the technical expertise nor the staffing necessary to adequately fulfill their new oversight responsibilities. The remaining firms were more neutral in their assessments. Most of these firms argued that it was still too early to tell how successful Commerce would be at integrating their new policy role into their existing bureaucratic and policy analysis structure.

### **The Department of State**

The primary criticism of the Department of Commerce, lack of technical expertise, was directed just as strongly at the Department of State. However, the similarity stops there. In contrast to their views about Commerce, all of the firms interviewed supported the recent organizational changes within State (particularly establishing the new offices of Defense Trade Controls and Defense Trade Policy). Specific criticisms of the level of technical expertise were particularly focused on two areas of the State Department bureaucracy, the offices responsible for processing export licenses (now under the purview of the DTC), and the embassy staffs. Many of the managers interviewed stated that embassy staff members have only been trained to facilitate FMS transactions rather than to establish collaborative programs. In addition, the embassy personnel cannot assist U.S. industry if more than one

firm is competing for either an FMS sale or, in the case of cooperative programs, if there is more than one team involving a U.S. and European firm competing for a procurement contract. In contrast, European embassy personnel will assist European firms regardless of the number of competitors on a contract. Despite these criticisms, there was resounding support for the recent reorganization. Many of the firms cited decreases in the processing time of basic licenses and a noticeable increase in staffing and attention focused on issues of cooperation and arms trade. There was one notable exception to this trend. A number of firms complained about the length of time it takes the State Department to notify Congress that a major export license is ready for congressional review (see discussion of this issue in Section 2). Finally, a majority of the firms interviewed stated that the 1990 Secretary Eagleberger cable concerning U.S. embassy support for defense trade had made a marked difference in their ability to negotiate both narrow coproduction agreements and more broad co-development contracts.

#### **The Department of Defense**

U.S. industry-concerns with Department of Defense policies and procedures rested primarily in two areas, the first being technology transfer (and more specifically the role played by the Defense Technology Security Agency), and the second being national disclosure policy.

**Technology transfer.** Five of the managers interviewed stated that for their firms, the biggest impediment to future cooperative programs is U.S. technology transfer policy. Another four asserted that U.S. technology transfer policy frequently impedes their efforts to establish cooperative programs, though they would not go so far as to assert that this was the most critical factor. Of the remaining six firms, three stated that technology transfer policies had not been as critical in their business because of the lower-tech nature of their products. The remaining three did not comment on this issue.

Among the nine firms concerned about technology transfer policies, managers consistently asserted that the process of evaluating technology transfer requests (which are directed by DTSA and processed through a number of offices at the DoD) takes far too long. Managers repeatedly stated that the transfer process is so slow as to make obsolete the technology in question before an agreement to continue development or production with a European partner can be reached. Furthermore, these managers argued that the painstaking process of gaining technology transfer approval serves to dissuade many European firms from agreeing to a cooperative program at all. Or, if they do agree, they are frequently forced to drop out of the process midstream because of repeated delays in DTSA's

permitting technology transfers. A number of the companies stated that they were confused about the intent of technology transfer restrictions. Many of these firms asserted that restricting West-West projects is both unnecessary and counter-productive, particularly when the U.S. firm and the European partner both sign agreements stating that they will not reexport either the product or the technology to non-allied countries. Finally, many of the firms argued that DTSA does not have the necessary technical expertise to evaluate requests to transfer many of the more sophisticated technologies. In fact, these firms argue that it is nearly impossible for DTSA to keep current on every area of possible technology transfer, and thus impossible for DTSA to make timely, informed decisions. The solution to this problem was not obvious to those interviewed.

Beyond the comments concerning the time necessary to complete a DTSA-related request, many of the firms stated that once a request enters the DTSA decision-making cycle, it is very difficult for either a U.S. or a European firm to track where in the process the request is and when the request will be acted upon. A number of the firms had specific suggestions concerning reorganizing DTSA as well as DSAA and the NDPC. These suggestions will be addressed in the last subsection of the interview analyses.

It is important to note that U.S. industry (as represented in my sample) is not unanimous in its dissatisfaction with DTSA. In fact, four of the firms explicitly stated their support for the role that DTSA plays in protecting U.S. technology. Three of the four were solidly behind DTSA, both in theory and in practice. One of the four described DTSA as a "necessary evil." Two of the three strongly supportive firms not only stated their support for DTSA but argued that many other firms that have had difficulty navigating the waters at DTSA are responsible for their own difficulties. These two firms argued that the process of monitoring technology transfers is necessarily bureaucratic and time consuming. They went on to argue that once international program managers and industry personnel responsible for negotiating export licenses understand the processes that must be completed, at DoD as well as at Commerce or State, the whole bureaucratic cycle becomes much more manageable.

Finally, few of the firms represented here mentioned third country export restrictions on technology or final products as having been a problem for them. One primary issue appears to be behind this. If a transfer is going to be denied, it generally derails at the initial transfer stage first, rather than at the decision point on third country export rights. If a transfer is denied at the outset, U.S. firms clearly cannot go on to request third country export approval. As a result, firms focus much more intently on the process of gaining approval for the initial transfer.

## THE NATIONAL DISCLOSURE POLICY COMMITTEE

In evaluating the impact the NDPC has had on cooperative programs, the most consistent observation made by the firms in this study is that the entrance into the exemption process is the most difficult part of the entire procedure. Firms must request exemptions to the NDP if classified information must be transferred to a European firm in order to complete a production or development contract. U.S. firms must have Service sponsorship in order to bring such a request to the Committee. Finding a Service sponsor is a difficult though not impossible task if one of the Services is procuring the product or proposed product or if the Service has an interest in providing the product to one of our allies. However, in many cases of cooperative programs, the U.S. firm is interested in an exemption to the NDP so that they can transfer information necessary to produce or develop a product to meet a European procurement requirement, rather than a U.S. one. In such cases, U.S. firms have found it extremely difficult to find a Service sponsor, and once they have found one, they argue that it is very difficult to persuade Service representatives to complete the requisite paperwork to move the exemption request forward. As a result, six of the firms represented here argued that industry should have the capacity to process the paperwork necessary and "sponsor" their own requests to the Committee. A number of these firms argued that if they cannot sponsor their own requests they should at least be allowed to present their case before the Committee. This is not allowed at present.

As in the case of DTSA, many of the managers asserted that the NDPC is unduly restricting West-West transfers of information (particularly with the United Kingdom) and that Committee members are not up to speed about what technologies and information in general should still be protected and what "classified" information is so widely available in alternative unclassified sources that the Committee should drop its restrictions. A number of firms argued that the NDPC process, much like the DTSA process, dissuaded European firms from attempting partnerships with U.S. firms. These managers asserted that European firms take exemption request denials as a "personal affront." European firms (again particularly from the United Kingdom) are offended and disappointed when the NDPC refuses to trust them with classified information. These managers argued that as a consequence, many U.S. firms are avoiding the whole process entirely by restricting their cooperative efforts to low-tech items and components, rather than high-tech products or major systems. Managers do not see this as a positive outcome. Although they see that there are risks inherent in attempting to cooperate on major systems and high-tech items, the rewards are also potentially much greater (both in reducing individual firm R&D outlays and in the future earning potential of the program).

### U.S. POLICY AND EC 92: WHERE DO WE GO FROM HERE?

None of the firms interviewed argued that they were overly anxious about the changes that may result from EC 92. Instead, they argued that because of the changing world situation (rather than just the situation in Europe), it is in the best interests of U.S. industry to cooperate with the Europeans. Many of the managers argued that with declining U.S. defense expenditures, access to the world defense market is very important, and the Europeans make up a large part of this market. Most of the managers asserted that EC 92 has been overdramatized, and they argued that they are still dubious about when and what form the new Europe will actually take. Even still, all of the firms agreed that establishing cooperative relationships of any form in NATO increases U.S. market access to Europe and that increased market access is very desirable.

All but three (see Figure 5) of the managers interviewed stated that they were in the process of pursuing new cooperative relationships. Two of the firms not currently pursuing new collaborative programs stated that corporate finances were at the heart of their decision to "stay home." Both firms argued the merits of cooperating, stating their belief in the need to participate in the global defense economy and the benefits accrued by the market access that had been afforded them as a result of their established partnerships abroad. They also argued, however, that U.S. firms must have deep financial reserves before they can take on

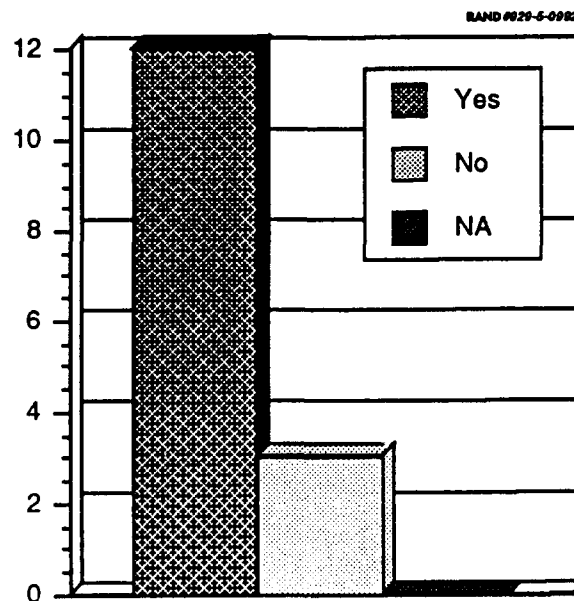


Figure 5—U.S. Firms Currently Pursuing New Partnerships

the risks inherent in a cooperative venture with a European partner. Neither firm had such reserves available and, therefore, was concentrating on completing existing cooperative programs and competing for new work either alone or with other U.S. partners. The third company asserted that coproduction and co-development had been successful and popular in their product area in the 1960s and 1970s when the Europeans lacked native industrial capacity. This firm argued that as the Europeans have gained strength in this product area, they have become far less interested in cooperating with U.S. firms and more committed to competing head-to-head for both U.S. and European procurement contracts. The U.S. firm contended that this situation is not likely to change and consequently that its best option is to continue to pursue sophisticated technological designs and compete, either alone or with another U.S. firm, for U.S. and European procurement contracts. The most consistent theme throughout this section of the interviews was that every firm interviewed supported both the concept and practice of international cooperation. None of the firms interviewed argued for closing off U.S. markets to the Europeans, cutting cooperative ties, and focusing entirely on producing for the United States with only other U.S. firms as partners.

When asked what kind of relationships they were pursuing with European partners, six firms responded that they were pursuing strategic alliance-style partnerships and nine answered that they were focusing on developing relationships on a project-by-project basis. In this context, a "strategic alliance" refers to a situation in which two or more firms form a partnership in which they jointly pursue projects across a number of product areas. Two of the six firms pursuing strategic alliance-style relationships stated that they already had a great deal of experience with similar style partnerships on the commercial side of their operations. They argued that corporate familiarity with this style of program was making similarly structured relationships on the defense side much more manageable. In contrast to this, one of the firms not pursuing strategic alliances stated that they did have such relationships on the commercial side of their company. They argued that their defense programs were far too high-tech to integrate into a strategic-style alliance. They asserted that success in cooperative programs would be much more likely for them if they focused their international defense partnerships on single projects. The remaining eight firms consistently stated that the complexity of a strategic alliance was what was deterring them from pursuing such partnerships. With the risks and uncertainty involved in all aspects of negotiating and implementing a cooperative program, these firms argued that there was a sense of security and damage limitation that came from moving forward on a project-by-project basis. Project-by-project relationships accomplish many of the positive outcomes associated with cooperative programs (such as increased market access, reduced R&D



expenditures, two-way transfers of technology, etc.) with a decreased risk of negative outcomes (such as multiple program cancellations if one strategic alliance goes sour).

Nearly all of the managers argued that given the right support from either the DoD or Congress and the executive branch, they would happily increase their efforts to develop new cooperative programs. Such "support" could come in one of two forms. First would be to release a high-level policy statement supporting the concept of RSI and the need for U.S. firms to cooperate with allied firms, and second would be to allocate additional funds similar to the Nunn monies to support the R&D phases of cooperative endeavors. Seven of the firms in the study specifically cited the need for such a high-level statement. These managers contend that many of the problems they face in completing cooperative projects are what they term "attitude generated." By this they mean that if a major change in "government attitude" occurred (exemplified by the release of a presidential or secretary-level statement), many of the other problems that they face would either be lessened or would disappear entirely. One manager contended that if senior-level DoD officials, Congress, and the executive do not make a public statement and begin to stand behind cooperative programs, nothing else matters. No amount of restructuring at the DoD or anywhere else can solve the problems currently plaguing cooperative programs without senior level support.

#### **GENERAL POLICY PROBLEMS AND PROPOSED SOLUTIONS**

U.S. industry attitudes concerning more general U.S. government policy problems focused primarily on the issue of interdepartmental coordination. The first section of this study addressed the highly complex nature of the policy structure that currently regulates international collaborative programs. Most of the U.S. firms interviewed here said that to complete a collaborative program, they (industry) bear the primary responsibility for coordinating the policy activities of the three main departments. Many of the managers argued that such coordination is quite difficult given the overlapping nature of policy responsibilities and differing policy goals, both across departmental lines and within individual departments. Beyond State, Commerce, and the DoD, many of the firms argued that the executive branch has served mainly to add to the confusion. These firms see the U.S. government as a whole sending very conflicting signals about whether it does or does not want to support cooperative programs. These firms go on to argue that given the risky and complicated nature of launching and completing a collaborative program, U.S. government support or at least consistency is a vital part of the equation.

Hand in hand with the issue of coordination across and within the departments is the issue of entering and exiting the collaborative program policy implementation process. Five

of the firms represented here stated that they have had a great deal of difficulty identifying which office within the various departments they should approach to pursue a collaborative program. Further difficulties occur when firms attempt to track where in the bureaucracy their various requests are being acted upon and when they can expect action or closure concerning a particular request. These problems have led industry to suggest a number of possible solutions. These include establishing a single in-door and a single out-door for all policy actions concerning collaborative programs. Each department could have its own in-door and out-door (no one suggested that the three departments needed a single door between them), allowing industry a centralized point of contact for all related activities within a single department. Other solutions include collapsing DTSA, DSAA, and the offices within USD(A) and USD(P) with oversight responsibility over collaborative programs into one central DoD collaborative program office (such as that proposed as a follow-on to the Kloske Group in 1990—six firms specifically stated that they would support such a consolidation). One of the firms cited earlier as supporting DTSA in its current form reiterated this support in response to the question of whether or not a single collaborative agency should be formed within the DoD. Here again, this firm repeated its belief that U.S. firms need to invest time in learning how to finesse the existing processes, rather than arguing for establishing a new management structure (which this firm argued would be a bigger, even less-manageable bureaucracy).

In lieu of reorganizing any of the three departments, three firms specifically suggested that manuals should be drawn up that describe who should be contacted, in the appropriate order, across all three departments to complete the paperwork and licensing necessary to pursue a collaborative program. One firm made clear that rather than launch a major reorganization, it would support a move toward a much more hands-off approach by all three departments and the executive (such as supporting free and open markets, loosening technology transfer restrictions, etc.).

Other general problem areas cited by industry included a number of issues relating to how the U.S. government proceeds in initiating a government-sponsored collaborative program. Four firms stated that the U.S. government needs to stop negotiating the foreign content percentage a collaborative program should include. They argue that this should be left up to the firms involved. They assert that frequently, the U.S. government promises arrangements to the foreign government and foreign firm for which the U.S. firm cannot follow through. NATO governments allow an industry representative to accompany them to negotiations with the U.S. government. This is not allowed on the U.S. side. As a result,

there is often confusion and disappointment on the part of the NATO partner firm when the U.S. partner cannot make good on U.S. government promises.

## CONCLUSION

U.S. industry managers consistently supported the proposition that current U.S. government policies used to regulate transatlantic collaboration are contradictory both in theory and in practice. These managers argued that U.S. government policies play a significant role in U.S. industry plans concerning transatlantic collaboration. According to U.S. industry managers, as long as government policy goals are as complex and conflicted as industry perceives them to be at present, it will continue to be difficult for U.S. industry to either complete existing collaborative programs or launch new ones. If the U.S. government adopts a stance that is strongly behind cooperative programs, adopts clear and consistent policy goals, and clarifies lines of authority to support such goals, U.S. industry asserts it will have a strong incentive to refocus both resources and manpower toward increasing its involvement in collaborative programs.

Clearly, the issue of transatlantic collaboration is quite complex, and it would be difficult, if not impossible, for the U.S. government to bring all of its policy goals in this area into complete harmony. It is also not uncommon for governments to try to pursue two or more policy goals simultaneously that are not compatible. What should also be noted is that U.S. industry's desires are no less conflicted than those of the U.S. government. For example, industry managers clearly support Buy America provisions and other protectionist legislation that protects goods that they perceive to be vulnerable to outside competitors while simultaneously requesting more lenient technology transfer policies to facilitate their collaborative programs. Industry-proposed "solutions" to the problem of transatlantic collaboration are arguably as problematic as many of the "solutions" attempted in the past by the U.S. government. No one in either industry or the government has a miracle cure at their fingertips.

One piece of the puzzle that is missing on both sides (U.S. government and industry) is a clear commitment to support transatlantic collaboration. Industry managers interviewed during the course of this study still believe that the U.S. government has to make that commitment. Policymakers need to decide whether they do in fact wish to facilitate industry efforts to pursue collaborative programs with European partners. If so, U.S. defense industry representatives believe that government policymakers must attempt to better reconcile what industry asserts are multiple, non-complementary goals and simultaneously act to simplify the current system of overlapping lines of authority used to regulate and

oversee transatlantic collaborative programs. Without such actions, these industry managers assert that U.S. government policies will continue to stymie industry efforts in this area.

**Appendix**  
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